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Nos. 07-21 & 07-25

Supreme Court, U.S.
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In The Supreme Court of the United States

WILLIAM CRAWFORD, *et al.*, *Petitioners,*

v.

MARION COUNTY ELECTION BOARD, *et al.*, *Respondents.*

INDIANA DEMOCRATIC PARTY, *et al.*, *Petitioners,*

v.

TODD ROKITA, in his official capacity as Indiana Secretary of State, *et al.*, *Respondents.*

On Writs Of *Certiorari* To The United States Court Of Appeals For The Seventh Circuit

JOINT APPENDIX

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Crawford, et al. v. Marion County Election Board, et al. (No. 07-21)

May 25, 2005 – Defendant's Notice of Removal from Marion Superior Court filed in the United States District Court for the Southern District of Indiana, Indianapolis Division.

June 23, 2005 – State of Indiana's Motion to Intervene filed.

June 23, 2005 – Order of the district court entered, granting State of Indiana's Motion to Intervene.

June 23, 2005 – Minute Entry for proceedings held before the district court entered, parties stipulating to consolidation of Cause No. 1:05-cv-804 (*Crawford, et al. v. Marion County Election Board, et al.*) with Cause No. 1:05-cv-634 (*Indiana Democratic Party, et al. v. Rokita, et al.*) under cause number 1:05-cv-634.

Indiana Democratic Party, et al. v. Rokita, et al. (No. 07-25)

May 2, 2005 – Plaintiffs' Complaint filed in the United States District Court for the Southern District of Indiana, Indianapolis Division.

June 23, 2005 – Minute Entry for proceedings held before the district court entered, parties stipulating to consolidation of Cause No. 1:05-cv-804 (*Crawford, et al.*

v. Marion County Election Board, et al.) with Cause No. 1:05-cv-634 (*Indiana Democratic Party, et al. v. Rokita, et al.*) under cause number 1:05-cv-634.

Consolidated Cases (Nos. 07-21 and 07-25)

August 8, 2005 – Plaintiffs' motion for leave to file second amended complaint filed.

August 26, 2005 – Order of the district court entered, granting plaintiffs' motion for leave to file second amended complaint.

August 26, 2005 – Plaintiffs' second amended complaint filed.

October 31, 2005 – Crawford Plaintiffs' motion for summary judgment filed.

October 31, 2005 – Crawford Plaintiffs' memorandum in support of motion for summary judgment filed.

October 31, 2005 – Indiana Democratic Party Plaintiffs' motion for summary judgment filed.

October 31, 2005 – Indiana Democratic Party Plaintiffs' memorandum in support of motion for summary judgment filed.

November 30, 2005 – Crawford Defendants' cross-motion for summary judgment filed.

November 30, 2005 – Crawford Defendants' memorandum in support of cross-motion for summary

judgment and in response to plaintiffs' motion for summary judgment filed.

November 30, 2005 – Indiana Democratic Party Defendants' cross-motion for summary judgment filed.

November 30, 2005 – Indiana Democratic Party Defendants' memorandum in support of cross-motion for summary judgment and in response to plaintiffs' motion for summary judgment filed.

December 21, 2005 – Crawford Plaintiffs' reply in support of motion for summary judgment filed.

December 21, 2005 – Indiana Democratic Party Plaintiffs' reply in support of motion for summary judgment filed.

January 11, 2006 – Crawford Defendants' reply in support of cross-motion for summary judgment filed.

January 11, 2006 – Indiana Democratic Party Defendants' reply in support of cross-motion for summary judgment filed.

April 14, 2006 – Order and Judgment of the district court entered, granting defendants' cross-motions for summary judgment and denying plaintiffs' motions for summary judgment.

April 24, 2006 – Crawford Plaintiffs' notice of appeal filed.

May 5, 2006 – Indiana Democratic Party Plaintiffs' notice of appeal filed.

May 11, 2006 – Order of the United States Court of Appeals for the Seventh Circuit entered, consolidating Cause No. 06-2218 (*Crawford, et al. v. Marion County Election Board, et al.*) with Cause No. 06-2317 (*Indiana Democratic Party, et al. v. Rokita, et al.*).

January 4, 2007 – Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit entered, affirming the district court.

January 17, 2007 – Plaintiffs' petition for rehearing and petition for rehearing en banc filed.

April 5, 2007 – Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit entered, denying plaintiffs' petition for rehearing and petition for rehearing en banc.

July 2, 2007 – Petition for Writ of Certiorari filed by Crawford plaintiffs/petitioners.

July 2, 2007 – Petition for Writ of Certiorari filed by Indiana Democratic Party plaintiffs/petitioners.

October 1, 2007 – Order of the United States Supreme Court, granting the Petitions for Writ of Certiorari.

UNITED STATES DISTRICT COURT*
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, vs. TODD ROKITA, *et al.*, Defendants	CAUSE NO: 1:05-CV-0634-SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, vs. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Filed Aug. 08, 2005)

Plaintiffs, Indiana Democratic Party and Marion County Democratic Central Committee (hereinafter

* Any typographical and/or incorrect punctuation found in the following Joint Appendix pages were intentionally left to show accurately how the original documents appeared.

"Democrats"), by their undersigned attorneys, for their second amended complaint against Defendants, Todd Rokita ("Rokita"), J. Bradley King ("King") and Kristi Robertson ("Robertson") *and the Marion County Election Board (the "Board")*, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure state as follows:[1]

JURISDICTION

1. This Court has subject matter jurisdiction over Democrats' claims pursuant to 28 U.S.C. §§1331, 1343(a)(3) and 2201. Democrats bring this action under 42 U.S.C. §1983 and seek to redress the deprivation, under color of State law, of rights, privileges and immunities secured by the Constitution and laws of the United States belonging to those voters who associate with them.

PARTIES

Democrats are political party organizations dedicated to electing candidates of the Democratic Party to public office in Marion County, and throughout Indiana, and with which are associated hundreds of thousands of registered voters who regularly support and vote for candidates who are affiliated with the Democratic Party. Many of the registered voters associated with the Democratic Party are

[1] For the convenience of the Court and Defendants, all new verbiage in this Second Amended Complaint is in italics.

persons of color, elderly persons residing in retirement facilities, disabled persons, homeless persons, students, and persons with limited or no income or wealth who do not or cannot afford to drive and who do not possess drivers' licenses issued by the State of Indiana, but who are registered to vote and desire to have their vote counted in future elections.

3. Democrats have standing to assert the rights of those registered voters who associate with them and who will be voting, or who desire to vote, in future elections for public office, including the elections scheduled in May and November, 2006.

4. Many of these registered voters will be deterred or prevented from voting, or their votes will not be counted, because of the actions of Defendants Rokita, King and Robertson, *and the Marion County Election Board,* and those election officials acting in concert with them, to enforce the photo identification mandates of Senate Enrolled Act 483 (hereinafter "SEA 483"), which was signed into law by the Governor of the State of Indiana on April 27, 2005.

5. Defendant Rokita is the Indiana Secretary of State and in that capacity is the chief election official of the State of Indiana. I.C. § 3-6-3.7-1. He is also charged with performing all ministerial duties related to the administration of elections by the State. I.C. §3-6-4.2-2(a). He is also responsible, with Defendants King and Robertson, in the implementation of the Help America Vote Act ("HAVA"). I.C. §3-6-4.2-2.5. He also serves as chair of the state recount commission. I.C.

§3-12-10-2.1(b). He also certifies the election of candidates for United States Senator and United States Representative. I.C. §3-12-5-9.

6. Defendants King and Robertson are the co-directors of the Indiana Election Division of Secretary of State Rokita's office and are responsible for the administration of various election functions to assist Defendant Rokita in implementing state and federal election laws, including SEA 483. *I.C. §3-6-4.2-2(b).* Their duties include instruction of local election officials regarding their legal responsibilities under Indiana's Election Code, publishing and disseminating to the public and election officials brochures and

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants,	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor	

Motion for Summary Judgment by Plaintiffs William Crawford, United Senior Action of Indiana, Indianapolis Resource Center for Independent Living, Concerned Clergy of Indianapolis, Indianapolis Branch of the NAACP, Indiana Coalition of Housing and Homeless Issues, Joseph Simpson

(Filed Oct. 31, 2005)

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, v. TODD ROKITA, *et al.*, Defendants,	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

Affidavit of Robert Andrew Ford

(Filed Oct. 13, 2005)

Comes now Robert Andrew Ford, being duly sworn upon his oath, and says that:

1. I am a case manager at Horizon House in Indianapolis, Indiana.
2. Horizon House is a day center providing various services to homeless persons.

3. As a case manager I work with individual persons to attempt to assist them in resolving problems that they are facing as homeless persons.

4. I have worked with numerous clients concerning identification issues.

5. Not infrequently, clients lose their possessions either through theft or circumstance and come to Horizon House with no identification whatsoever.

6. I frequently try to assist the person in getting a copy of their birth certificate.

7. The first problem is the cost. In Marion County it is $10. Catholic Social Services will pay this cost. However, this service is certainly not a matter of public knowledge and there is no reason to believe that persons who are not advocates know that this service is available. The availability of this service is not advertised by Catholic Social Services, the Marion County Board of Health or the State Department of Health.

8. If the individual was born out of state it is extremely difficult for our clients to obtain a birth certificate. First, there is the cost factor and there are no organizations that I am aware of that regularly assist persons here with the cost of out-of-state birth certificates. Then there is the question of what further information is required by out of state keepers of vital statistics to obtain a birth certificate from that state. Frequently our clients literally have no types of identification.

9. For example, I am aware that birth certificates cost the following in the following states:

California -	$15
New York -	$30
Ohio-	$15
Michigan -	$26

10. Moreover, depending on the state, it may take months to receive an out-of-state birth certificate, even if the particular identification requirements to obtain the birth certificate are satisfied.

11. This lack of documentation is also a problem in Marion County. In order to obtain a birth certificate the individual must at least have a state identification card or Social Security Card or other items such as a credit card, bank card, or lease and a homeless person might not have any of these. They will then not be able to obtain a birth certificate, even if they have the $10. I have had clients who did not have sufficient identification to obtain a birth certificate from either the Marion County Board of Health or the State Department of Health.

12. I have also worked with my clients to try to get them valid identification cards from the Bureau of Motor Vehicles.

13. This has been extremely difficult. Not only has it cost money in the past in order to obtain an identification card, but the Bureau of Motor Vehicles requires, in addition, other information besides a birth certificate. I know from working with my clients that some of them do not have this secondary and other information and therefore they are unable to obtain even an identification card. Therefore; I am personally aware of persons who were not able to obtain identification cards.

14. This last election (November of 2004) Horizon House sponsored a voter registration drive at Horizon House. Many of our clients were reluctant to register and vote because they had the attitude that it would not make any difference. However, a significant minority did register, using Horizon House as their address, and voted.

15. On Election Day I went in a van with Horizon House clients to vote. One person was challenged and it took 1 ½ hours to get through the provisional ballot procedure with me assisting. It was clear to me that without my presence there that my client would have gotten discouraged and would have left without voting.

16. It is extremely stressful to be homeless and homeless persons are conditioned to avoid confrontation and stressful situations. Rather than face these types of situations, it is my experience that most homeless persons will avoid them.

17. Therefore, I believe it to be quite likely that a homeless person who is faced with a challenge to his or her ability to vote will not pursue his or her right to vote but will leave the poll rather than face a situation of confrontation.

18. Homeless persons in Marion County have severe transportation problems and if a homeless person does not have proper identification and must go to the poll, vote on a provisional ballot, go to the license branch to get identification, and then go to the Clerk's office, or even go to the Clerk's office only, the transportation difficulties will most probably prevent the homeless persons from doing what is necessary to have his or her vote counted.

19. As indicated above, it is quite stressful to be homeless and anything which makes voting more difficult will probably deter many, if not most, homeless persons from voting.

Declaration

I declare under penalty of perjury that the foregoing is true and correct. Executed on 9/26/05.

/s/ Robert A. Ford
Robert Andrew Ford

Prepared by:

Kenneth J. Falk
Attorney at Law

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, v. TODD ROKITA, *et al.*, Defendants,	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor	

Affidavit of Brenda Thompson

Comes now Brenda Thompson, being duly sworn upon her oath, and says that:

1. I am a case manager at Horizon House in Indianapolis, Indiana.
2. Horizon House is a day center providing various services to homeless persons.

3. As a case manager I work with individual persons to attempt to assist them in resolving problems that they are facing as homeless persons.

4. I have worked with numerous clients who were seeking to obtain identification.

5. Not infrequently, clients lose their possessions either through theft or circumstance and come to Horizon House with no identification whatsoever.

6. I frequently try to assist the person in getting a copy of their birth certificate.

7. The first problem is the cost. In Marion County it is $10. Catholic Social Services will pay this cost. However, this service is certainly not a matter of public knowledge and there is no reason to believe that persons who are not advocates know that this service is available. This service is not advertised to the public by Catholic Social Services, the Marion County Board of Health or the Indiana Department of Health.

8. If the individual was born out of state it is extremely difficult for our clients to obtain a birth certificate. First, there is the cost factor and there are no organizations that I am aware of that regularly assist persons here with the cost of out-of-state birth certificates. Then there is the question of what further information is required by out of out of state keepers of vital statistics to obtain a birth certificate from that state. Frequently our clients literally have no types of identification.

9. Moreover, depending on the state, it may take months to receive an out-of-state birth certificate,

even if the particular identification requirements to obtain the birth certificate are satisfied.

10. This lack of documentation is also a problem in Marion County. In order to obtain a birth certificate the individual must at least have a state identification card or Social Security Card or other items such as a credit card, bank card, or lease and a homeless person might not have any of these. They will then not be able to obtain a birth certificate, even if they have the $10.

11. I recently accompanied a homeless client who was trying to get a copy of her birth certificate from the Marion County Health and Hospital Corporation. She had a Social Security card but the employee at the Health and Hospital Corporation wanted more and informed my client that without further identification she could not obtain a copy of her birth certificate. We were then sent downtown to the Indiana Department of Health. The employee there was not willing to give my client a copy of her birth certificate until I informed the employee who I was.

12. It was quite clear that if I had not been there to advocate for my client she would have not been able to receive a birth certificate. Moreover, this required us to go first to the County Health Department at 3838 N. Rural Street and then downtown to the Indiana State Board of Health. I was providing the transportation. Otherwise, it would have been extremely difficult for my client to have done this.

13. It is my experience that my clients, when not assisted by an advocate, will frequently not be

able to navigate through agencies and bureaucracy to obtain such basic things as birth certificates or identification, even if the homeless persons have the underlying documents or information necessary to obtain the birth certificate or identification. I am therefore aware of persons who simply have not been able to obtain their birth certificates.

14. I have also worked with my clients to try to get them valid identification cards from the Bureau of Motor Vehicles.

15. This has been extremely difficult. Not only has it cost money in the past in order to obtain an identification card, but the Bureau of Motor Vehicles requires, in addition, other information besides a birth certificate. I know from working with my clients that some of them do not have this secondary and other information and therefore they are unable to obtain even an identification card.

16. My homeless clients have difficulty in obtaining transportation to move about Indianapolis. They frequently walk everywhere they go.

17. This means that even if they present themselves to vote and are challenged under the new identification law and are informed that in order for their ballot to count they must go get identification and then go to the Clerk's office, or even it they were to be told that they just had to go to the Clerk's office, homeless persons probably will not do so because of transportation difficulties.

18. Moreover, it is my experience that homeless persons generally avoid confrontation and stressful situations. Therefore, if a homeless person's

right to vote at a poll on election day is challenged, the homeless person will probably leave the poll and not try to vote despite the challenge.

19. It is extremely stressful to be homeless and a homeless person simply will take steps to avoid increasing the stress of his or her existence. This means that even if the homeless person wishes to vote, he or she will not do so if the voting experience is made difficult. This means that if the homeless persons must take extraordinary steps to vote, such as obtaining a birth certificate or identification, which, as indicated above, is not easy, he or she will not vote.

20. I am personally aware that there are homeless persons who have registered to vote and who wish to vote.

Declaration

I declare under penalty of perjury that the foregoing is true and correct. Executed on 10-20-005.

/s/ Brenda Thompson
Brenda Thompson

Prepared by:

Kenneth J. Falk
Attorney at Law

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:05-CV-00634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,

vs.

TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,

vs.

MARION COUNTY ELECTION BOARD,
Defendant,

and

STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of **MICHELLE NIEMIER,** a witness produced and sworn before me, Linda Mayo Baynes, Notary Public, RPR, CP, CSR, in and for the County of Hamilton, State of Indiana; taken on the 8th day of September, 2005, at the offices of ClearPoint Legal, Inc., One Indiana Square, Suite 2525, Indianapolis, Marion County, Indiana; pursuant to Notice and the Indiana Rules of Trial Procedure. This deposition

was taken on behalf of the Marion County Election Board in the above-captioned matter.

* * *

[23] Q. Okay. So somehow these 15,000 people found about your organization, how did that happen?

A. Most often, people learn of our organization, because there's been some activity at their group, we've been invited out to speak to their group of retirees, somebody's heard about us as word of mouth. Occasionally, we will get calls from people, because they've seen some news coverage of one of our actions and – or our issues that's been in the local press. And they want to get involved as well. I would say those are the two primary ways.

Q. Okay. Paragraph 38, it indicates that that many – the assertion is that many senior citizens may not have valid driver's licenses or state identification cards. Is this a – is this a assertion based on any facts of which you're aware?

A. It's based on my experience with the organization and conversations over the last 16 year of our members.

Q. Okay. Does your experience tell you enough to be able to estimate how many of [24] your members might fall into those categories?

A. No. I could not estimate the number.

Q. Okay. Has there been any kind of survey done, or are you – are you in the process or – or

thinking about even conducting such a survey to identify how much of your membership might fall into that category?

A. No. We do not have plans for that.

Q. Paragraph 39 indicates that many of your members will be discouraged from voting because of the new identification requirements under Senate Enrolled Act No. 483, even though they have voted in – in the past. Is that assertion also based on your experience, or is there other information that informs that?

A. That is also based on experience and conversation with our members.

Q. Okay. Have you had conversations since Senate Enrolled Act No. 483 has been passed from members saying that they're going to be discouraged about voting or– or from voting, rather?

[25] A. No. I've not spoken to any individual members that I will not be able to vote because of this, since it's enacted.

Q. Okay.

A. My – my point was that over the years, I know how difficult it has been for people I've spoken to, I do not have an exact number, who say for one reason or another they – they don't drive anymore, they don't have a driver's license anymore, and – and they rely on other people for transportation or can't

get out, so that I know that friends pick them up and take them, to voting places.

Q. Uh-huh.

A. I mean, again, this is anecdotal over the years. And I've – I've had people call my office. I – I can – I can remember distinctly one – one gentleman who was trying to obtain some service and – and he was required to try to obtain a birth certificate. Well, you know, he – he was born in Mississippi, he wasn't even sure what year he was born in, let alone try to figure out where – you know, whether a birth

* * *

[38] questions about other than anecdotal evidence or discussions with members that there's no hard dat – data or survey that – is there any hard data or survey that you're familiar with as to who is going to be able to vote (or not vote as a result of the –

A. No. United Senior Action does not maintain that. Again, in our opinion –

Q. Well, that's fine. I – I've got it. But what does that second part mean " . . . or who will find impediments to voting in their way because of the challenge law"? What did you mean by that?

A. I apologize. Please refer me again.

Q. Oh, I'm sorry. Read back to page 4?

A. Thank you.

Q. You see in the same answer, the second last sentence – of your answer.

A. Thank you.

Q. "We have members who will not be able to vote." We've discussed that. " . . . or who will find impediments to voting in their way because of the challenge law." What did you mean by that, "find impediments to voting"?

A. In our minds, impediments would

* * *

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al,. Defendants,	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

RESPONSE OF UNITED SENIOR ACTION TO INTERVENOR-DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

Comes now United Senior Action of Indiana, by Michelle Niemier, who, being duly sworn upon her

oath, responds to the Interrogatories served upon the organization. Further, Concerned Clergy of Indianapolis, by its counsel, files its response to the Request for Production of Documents served upon the Organization.

INTERROGATORIES

INTERROGATORY 1:

Please state the name, address, and organizational position of the individual(s) answering these interrogatories on behalf of the United Senior Action of Indiana.

ANSWER:

Michelle Niemier, Executive Director, United Senior Action of Indiana, 324 W. Morris Street, Indianapolis, Indiana, 46225, 317/634-0872.

INTERROGATORY 2:

Please define "members" as used by the United Senior Action of Indiana in paragraph No. 36 of its Complaint.

ANSWER:

Our members are people who join the organization by paying dues.

INTERROGATORY 3:

Please identify what information is maintained by the United Senior Action of Indiana on each of its members.

ANSWER:

We maintain members' names, addresses, phone numbers, donation histories, group affiliation, and their legislative districts.

INTERROGATORY 4:

Please identify any by-laws or written policies of the United Senior Action of Indiana that set forth the requirements for membership in your organization.

ANSWER:

The relevant portions of our by-laws are attached.

INTERROGATORY 5:

What records, if any, are kept by the United Senior Action of Indiana that identify:

1. The financial status of members of United Senior Action of Indiana.
2. Members of United Senior Action of Indiana who possess driver's licenses.
3. Members of United Senior Action of Indiana who possess photo ID.

4. Aggregate voting records of members of United Senior Action of Indiana

ANSWER:

We do not maintain any of these records.

INTERROGATORY 6:

Is the United Senior Action of Indiana claiming associational standing for its members or anyone else? If so, please identify for what injuries United Senior Action of Indiana claims associational standing.

ANSWER:

Yes, United Senior Action of Indiana is claiming associational standing. My attorney has informed me that under certain circumstances an organization can raise the injuries of its members. We have members who will not be able to vote or who will find impediments to voting in their way because of the challenged law. United Senior Action is raising these injuries for our members.

INTERROGATORY 7:

Is the United Senior Action of Indiana claiming a direct injury to itself? If so please state that injury with specificity.

ANSWER:

United Senior Action has a direct interest in seniors participating in the elective process to the greatest extent possible. United Senior Action is an effective advocacy organization only insofar as our members are committed voters. To the extent that our members' ability to vote is diminished, not only is their effectiveness as advocates diminished, but also so is the organization's effectiveness diminished. Therefore, United Senior Action is directly injured by the challenged statute.

* * *

AARP

Voter Identification in Indiana: A Demographic Analysis of Impact on Older Indiana Citizens

Prepared by Susan L. Silberman, Ph.D., AARP Knowledge Management

October 2005

Background In Spring 2005, the Indiana legislature passed Senate Enrolled Act 483. The bill requires voters to show a government-issued photo identification – including a driver's license, passport, state identification card, or military card – before they could cast a ballot in a general or primary election. Voters who do not have identification could vote provisionally; their votes would count only if they went to their county election board within a week and presented a photo identification or a signed affidavit indicating they could not afford to obtain an identification or had religious objections to having a photo taken for identification.

The debate around the new law has been fierce. Lawmakers supporting the bill assert that stricter voter identification efforts will help combat voter fraud, shore up public trust in the election system, and ensure fair elections. Those who oppose the new law contend that it will discourage voting and is more likely to disenfranchise the poor, rural residents, the disabled, the elderly, and minorities. They compare the stricter voter identification laws to the days of poll taxes.

In an effort to further understand the potential impact of the new law on Hoosiers, AARP Indiana commissioned a survey to examine:

- Who has a valid Indiana State issued driver's license and
- Who has a valid Indiana State issued identification card

This brief is based on data from a telephone survey of 843 Indiana registered voters age 60 and older. It was conducted from September 27 through October 4, 2005. AARP Indiana commissioned Woelfel Research, Inc. to conduct a random digit dial (RDD) telephone survey of self-identified registered voters age 60 and older in Indiana. The sample included 800 Hoosiers age 60 and older with an additional sample of 43 Hoosiers age 80 and over. All respondents were contacted using an RDD methodology and screened for voter registration. The survey has a sampling error of +/- 3.38 percent[1]; the survey responses were weighted to reflect the distribution of age and gender among registered voters in the 60+ population in Indiana. Weighted responses to all survey questions are in the attached annotated questionnaire.

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[1] The response rate is 14 percent and the cooperation rate is 95 percent. The response rate is Response Rate 3 and the cooperation rate is Cooperation Rate 3 from the following publication: The American Association for Public Opinion Research. 2000. *Standard Definitions: Final Dispositions of Case Codes and Outcome Rates for Surveys.* Ann Arbor, Michigan: AAPOR.

Highlights of Key Findings

- One in ten (10%) survey respondents currently do not have a valid Indiana State issued driver's license.
- Demographic groups differ. The populations less likely to have a valid Indiana State issued driver's license are detailed below[2].
    - Older respondents, those age 75+, are more likely than younger respondents to not have a valid state issued driver's license (60-74:6% vs. 75+: 16%)
    - Respondents who are non-White are more likely than those who are White or Caucasian to not have a valid state issued driver's license (Non-White: 30% vs. White: 9%).
    - Disabled respondents are more likely than the non-disabled to not have a valid state issued driver's license (Disabled: 19% vs. Non-disabled: 6%)
    - Those who say their health status is *fair* or *poor* are more likely than those who say their health status is *excellent/very good/good* to not have a valid state issued driver's license (Health status *fair or poor:* 18% vs. health status *excellent/very good/good*: 7%)
    - Survey respondents with household income of less than $20,000 are more likely than those respondents with household incomes of

[2] These differences are statistically significant at the 95 percent confidence interval.

$20,000 or more to not have a valid state issued driver's license (<$20K: 15% vs. $20k+: 6%).

- Respondents who live in cities are more likely than those who live in suburbs and the country to not have a valid state issued driver's license (Cities: 14% vs. Suburb/Country: 6%). Also, respondents who live in small towns are more likely than those who live in the country to not have a valid state issued driver's license (Small towns: 10% vs. Country: 5%).
- Survey respondents who say their political views are Moderate are more likely than those who are Conservative to not have a valid state issued driver's license (Moderate: 11% vs. Conservative: 6%)

- Three in ten respondents (29%) currently have a valid Indiana State issued identification card.
- Of the survey respondents who do not have a state driver's license or a state identification card, three in ten say they are *not very or not at all* likely to get a form of picture identification, even if it was required to vote in state and national elections.[3]

* * *

[3] Twenty-seven individuals out of 843 (3%) do NOT have either a state driver's license or a state identification card. With such a small number of cases to analyze, there are no generalizations that can be made from these results.

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:05-CV-00634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,

Plaintiffs,

vs.

TODD ROKITA, et al.,

Defendants.

WILLIAM CRAWFORD, et al.,

Plaintiffs,

vs.

MARION COUNTY ELECTION BOARD,

Defendant,

and

STATE OF INDIANA,

Intervenor.

The deposition upon oral examination of **MELISSA MADILL**, a witness produced and sworn before me, Kathleen L. Cast, Notary Public, in and for the County of Marion, State of Indiana; taken on the 9th day of September, 2005, at the offices of Clear-Point Legal, Inc., One Indiana Square, Suite 2525, Indianapolis, Marion County, Indiana; pursuant to Notice and the Indiana Rules of Trial Procedure.

This deposition was taken on behalf of the Marion County Election Board in the above-captioned matter.

* * *

[11] Q. Okay. I'm going to refer you to page 9, I believe. Actually, it kind of starts at the bottom of page 8, but the – the content is starting at page 9. It indicates – well, first of all, before we go – go down that road, tell me how you became involved in this lawsuit.

A. I actually testified on the bill – against the bill being passed.

Q. At the legislature?

A. At the legislature, and the impact that it would have on people with disabilities. And so when it was passed, I had great concern and with – actually heard through the grapevine that there was a lawsuit, and – and called – I think it was the Senior Action Coalition.

Q. Okay.

A. We – we connected, and they got me connected with Ken.

Q. And you got hooked up in the – into the lawsuit?

A. Right.

Q. When you testified, do you recall which particular committee that you testified [12] in front of?

A. I can tell you the room it was in, but I can't remember the - the committee.

Q. Okay. Do you remember what stage the legislation was in at the time you were testifying?

A. No.

Q. Okay.

A. I actually don't.

Q. Okay. Well, before we get into the details of this, why don't you tell me generally what your objections to Senate Enrolled Act 483 are?

A. I'm - I have great concerns that people with disabilities are going to face yet another barrier to be able to vote. And -

Q. Give me a second. I'm - I'm slow sometimes. I have to think through things. When you say, "I have great concerns," are they - are those concerns based on any particular facts or information of which you are aware?

A. Yes.

Q. Okay. Can you describe those for me?

* * *

[23] **but not specific to what those advocacy issues were.**

Q. Uh-huh. Did any of - the estimated ten to 15 people that - that you talked with, did any of them

indicate that the provisions of Senate Enrolled Act 483 would prevent them from voting?

A. They were concerned about their – the barriers that it would create for them to vote.

Q. So it was more of a general concern?

A. Yes.

Q. And I take it by your answer that – that nobody specifically communicated to you that they were not going to be able to vote because of this legislation?

A. No, no.

Q. Okay. How did it come about that – that you went to testify to the legislature on Senate Enrolled Act 483 on the subject matter of it? Did – I mean, how did your organization – or how were you identified as a person who should testify?

A. I self-identified.

Q. Okay. So you did – you chose on

* * *

[25] then, but –

A. I'll try not to let you.

Q. Good, good. Well, let's – let's just go ahead and talk about that right now then. You indicated that not only people within your membership contacted you about this but that there were people who

you would provide service to, who also contacted you; is that correct?

A. People with disabilities did also, yes –

Q. Okay.

A. – contacted us, and parents of people with disabilities that contacted us.

Q. How many people do you think fell into that category, not – not actual members, but people beyond that who could be members that – or parents?

A. I'd probably say about another ten to 15 people.

Q. Okay. Did any of those individuals tell you that the effect of Senate Enrolled Act 483 would be that they would not be able to vote?

A. No. It was – they think.

* * *

[30] [Q.] With regard to paragraph 48 of Exhibit A, it says that, "Many of the members at the Indianapolis Resource Center for Independent Living will be discouraged from voting or from voting in person by Senate Enrolled Act No. 483."

Aside from the – the general [31] concerns about barriers – again, I – I guess, this is repeating the question I've already asked, but are there specific members who have told you that they are going to be discouraged from voting because of Senate Enrolled Act 483 becoming law?

A. Discouraged – you know, it would kind of depend on how you define "discouraged." It's basic –

Q. And you – you're free to define it how you want.

A. It's – it's basically been stated that it's yet another barrier we face in order to be able to vote.

Q. Again, well, discouraged does not in this context – or would you agree that discouraged does not mean prevention? I mean, has anybody said to you that they're going to be prevented from voting?

A. No. Because we make sure if they said that, that we'd somehow fix the situation and get them to the polls. I mean, this is not really about the people who know about the legislation; this is going to impact all the people that don't know [32] **about it.**

Q. Okay. Well, it may be about the people who don't know about it, but, at least, in this assertion in paragraph 48, you're talking about your membership.

Are – are you saying the members don't know about this at this point?

A. Which are people with disabilities. Some of the members, I'm certain don't know about this.

Q. What – what have you done in terms of communicating the provisions of Senate Enrolled Act 483 to your membership?

A. It went out in our last newsletter.

Q. Okay. And when was that?

A. The newsletter I – I received the newsletters on Friday.

Q. Uh-huh. So Friday the 2nd of September?

A. Uh-huh.

Q. And how often do you send out newsletters?

A. Every other month. There was also information in a previous newsletter – newsletter, just about different legislation,

* * *

DEFENDANT'S EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,	)	
Plaintiffs,	)	
v.	)	
TODD ROKITA, et al.,	)	
Defendants,	)	
	)	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al.,	)	
Plaintiffs,	)	
v.	)	
MARION COUNTY ELECTION BOARD,	)	
Defendant,	)	
and	)	
STATE OF INDIANA,	)	
Intervenor.	)	

RESPONSE OF INDIANAPOLIS RESOURCE CENTER FOR INDEPENDENT LIVING TO INTERVENOR-DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION

Comes now Melissa Madill, Executive Director of the Indianapolis Resource Center for Independent

Living ("IRCIL"), being duly swam upon her oath, and by her counsel, and files responses to Intervenor-Defendant's Interrogatories and Request for Production of Documents.

INTERROGATORIES

INTERROGATORY 1:

Please state the name, address, and organizational position of the individual(s) answering these interrogatories on behalf of the Indianapolis Resource Center for Independent Living.

ANSWER:

Melissa Madill, Executive Director, Indianapolis Resource Center for Independent Living, 1426 W. 29th St., Suite 207, Indianapolis, Indiana, 46208.

INTERROGATORY 2:

Please define "members" as used by the Plaintiff in paragraph No. 45 of your Complaint.

ANSWER:

Under our current by-law, our members are the Board of Directors and the people with disabilities whom we serve.

INTERROGATORY 3:

Please identify any by-laws or written policies of the Indianapolis Resource Center for Independent Living

that set forth the requirements for membership in your organization.

ANSWER:

The current by-laws are attached.

INTERROGATORY 4:

Please identify the particular process the Indianapolis Resource Center for Independent Living used to make the conclusion in paragraph No. 48 of its Complaint that many of its members "will be discouraged from voting or from voting in person by Senate Enrolled Act (SEA) No. 483".

ANSWER:

This is based on our in depth understanding and knowledge of the community that we serve:

INTERROGATORY 5:

Please identify by name and address your members that "will be discouraged from voting or voting in person by SEA No. 483".

ANSWER:

We do not have the names of specific persons with disabilities who will be discouraged.

INTERROGATORY 6:

What records, if any, are kept by the Indianapolis Resource Center for Independent Living that identify:

1. The financial status of the members of the Indianapolis Resource Center for Independent Living.
2. Members of the Indianapolis Resource Center for Independent Living who possess driver's licenses.
3. Members of the Indianapolis Resource Center for Independent Living who possess photo ID.
4. Aggregate voting records of members of the Indianapolis Resource Center for Independent Living.

ANSWER:

We do not have such records.

INTERROGATORY 7:

Is the Indianapolis Resource Center for Independent Living claiming associational standing for its members or anyone else? If so, please identify for what injuries the Indianapolis Resource Center for Independent Living claims associational standing.

ANSWER:

Yes. IRCIL is claiming associational standing. My attorney has informed me that under certain circumstances an organization can raise the injuries of its members. We have members who will not be able to vote or who will have great difficulty in voting because of the challenged law. IRCIL is raising these injuries for its members.

Additionally, my attorney has informed me that a party in a lawsuit may raise the interests of others where the party has a close interest to the third party and there is some hindrance to the third party raising those claims. IRCIL represents many persons who do not have the means or abilities to raise issues for themselves. The issues raised by this case are a perfect example of a situation where IRCIL needs to raise claims for persons who are unable to raise them themselves.

INTERROGATORY 8:

Is the Indianapolis Resource Center for Independent Living claiming a direct injury to itself? If so, please state that injury with specificity.

ANSWER:

Yes. The effectiveness of our advocacy, and that of our members, is dependent on elected officials perceiving persons with disabilities as a voting block to be reckoned with. The statute we are challenging in this case threatens IRCIL's effectiveness because it will make it more difficult for disabled persons to vote. This, in turn, will hinder IRCIL's effectiveness.

* * *

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:05-CV-00634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,

vs.

TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,

vs.

MARION COUNTY ELECTION BOARD,
Defendant,

and

STATE OF INDIANA,
Intervenor.

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The deposition upon oral examination of **RODERICK E. BOHANNAN,** a witness produced and sworn before me, Kathleen L. Cast, Notary Public, in and for the County of Marion, State of Indiana; taken on the 9th day of September, 2005, at the offices of ClearPoint Legal, Inc., One Indiana Square, Suite 2525, Indianapolis, Marion County, Indiana; pursuant to Notice and the Indiana Rules of Trial Procedure. This deposition was taken on behalf
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of the Marion County Election Board in the above-captioned matter.

* * *

[18] Q. And that was a broad question. Did you have any conversations relating to whether or not a member had the required identification after it became law?

A. If you're asking me, if I asked people, do they have identification defined by the statute, no, I did not. If you ask me whether people say, I don't think I'll be able to vote the way the stat – the way the statute is construed, yes.

Q. Okay. Okay. It's – do you have an [19] idea how many people would have fit into that second category?

A. No, I mean, we didn't – I didn't keep a tally.

Q. Okay. Have you done – and I gather from that, that you haven't done any kind of survey of your membership to determine how many people might be affected?

A. No.

Q. And even though you do recall having had conversations like this with members, you don't remember a specific member who may have had this conversation with you.

A. No. And there's a reason we don't.

Q. Okay. Well, why is that?

A. Because historically, African-Americans, in the meetings – specifically their experience in the south and their experience in voting and their experience in terms of difficulty voting, we have a policy that if people come to us with problems or ask us about things, we don't take down their name and number, because people would then not come forward and discuss with you or ask questions or get information or ask [20] **to be involved. That experience level still permeates even to this day.**

Q. So you preserve their anonymity in hopes that, that more people will come forward with problems, if they have problems?

A. That's correct.

Q. Okay. Because somebody like me might want to know who all those people are and then may to talk to them, is this –

A. That's correct. And I'm sure you're aware of the media cases have to deal with it.

Q. Okay.

A. NAACP – and membership and identification.

* * *

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants,	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

INDIANAPOLIS CHAPTER OF THE NAACP'S RESPONSES TO INTERVENOR-DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION

Comes now the Indianapolis Chapter of the NAACP, by its designate, Roderick Bohannon, who,

being duly sworn upon his oath, responds to the Interrogatories served upon the organization. Further, the Indianapolis Chapter of the NAACP, by its counsel, files its response to the Request for Production of Documents served upon the Organization.

INTERROGATORIES

INTERROGATORY 1:

Please state the name, address, and organizational position of the individual(s) answering these interrogatories on behalf of the Indianapolis Branch of the NAACP.

ANSWER:

Roderick Bohannon, c/o NAACP, Julia Carson Center, 300 E. Fall Creek Place, Indianapolis, Indiana, 46205.I am the immediate past President of the Indianapolis Chapter of the NAACP and I am currently the head of the Chapter's Legal Redress Committee.

INTERROGATORY 2:

Please define "members" as used by Indianapolis Branch of the NAACP in paragraph No. 63 of its Complaint.

ANSWER:

Our members are persons who join the NAACP and pay membership dues annually.

INTERROGATORY 3:

Please identify any by-laws or written policies of the Indianapolis Branch of the NAACP that set forth the requirements for membership in your organization.

ANSWER:

There are written by laws put out by the national office of the NAACP. I am in the process of trying to obtain these.

INTERROGATORY 4:

Please identify the particular process that your organization utilized to identify those members of your organization that will have pay to obtain original copies of birth certificates to get photo identification from BMV.

ANSWER:

The Indianapolis Chapter of the NAACP did not specifically identify such members.

INTERROGATORY 5:

Please provide the names and address of those members of Indianapolis Branch of the NAACP that you have identified that will need to purchase a copy of their birth certificate in order to vote.

ANSWER:

The Indianapolis Chapter of the NAACP did not specifically identify such members.

INTERROGATORY 6:

What records does Indianapolis Branch of the NAACP maintain that allow you to measure "its political effectiveness" referred to in paragraph No. 68 of your Complaint.

ANSWER:

There are no such records and there is no easy way to measure this. But, it is clear form the history of both the NAACP and the civil rights movement in generals that political power enhances the ability of civil rights organizations to be effective. Therefore, if the political power of minorities is compromised, the effectiveness of civil rights organizations is diminished.

INTERROGATORY 7:

What records, if any, are kept by the Indianapolis Branch of the NAACP that identify:

1. The financial status of members of the Indianapolis Branch of the NAACP.
2. Members of the Indianapolis Branch of the NAACP who possess driver's licenses.
3. Indianapolis Branch of the NAACP who possess photo ID.
4. Aggregate voting records of the members of the Indianapolis Branch of the NAACP.

ANSWER:

The Indianapolis Branch of the NAACP does not have such records. We keep only information as to our members' names and addresses and information as to their dues paying status.

INTERROGATORY 8:

Is the Indianapolis Branch of the NAACP claiming associational standing for its members or anyone else? If so, please identify for what injuries the Indianapolis Branch of the NAACP claims associational standing.

ANSWER:

Associational standing is based on the fact that the challenged statute will make it more difficult for

persons, particularly minorities, from voting. This is the injury.

INTERROGATORY 9:

Is the Indianapolis Branch of the NAACP claiming a direct injury to itself? If so please state that injury with specificity.

ANSWER:

Yes, the NAACP is claiming direct injury to itself. As indicated above the strength of the NAACP and its branches is dependent upon the political clout of African-Americans and other minorities and to the extent that these persons are deterred from voting it injures the NAACP and its branches inasmuch as it renders the NAACP and its branches less effective in arguing their issues.

* * *

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:05-CV-00634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,

vs.

TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,

vs.

MARION COUNTY ELECTION BOARD,
Defendant,

and

STATE OF INDIANA,
Intervenor.

~~~~~~

The deposition upon oral examination of **MARGIE OAKLEY,** a witness produced and sworn before me, Kathleen L. Cast, Notary Public, in and for the County of Marion, State of Indiana; taken on the 9th day of September, 2005, at the offices of Clear-Point Legal, Inc., One Indiana Square, Suite 2525, Indianapolis, Marion County, Indiana; pursuant to Notice and the Indiana Rules of Trial Procedure. This
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deposition was taken on behalf of the Marion County Election Board in the above-captioned matter.

* * *

[14] requirements, anything like that?

A. No. No, we just vote them in.

Q. Are they dues paying members, or are you a member just by vote?

A. Yeah, we have a membership fee and then monthly dues, because we cater breakfast every morning for the members. So catering stuff have to be paid for the food.

Q. Okay. If you could refer to Exhibit A, which you have in front of you, that's the other document.

A. Oh, this one?

Q. Yeah.

A. Okay.

Q. Do you recognize Exhibit A?

A. Yes.

Q. And what is that document?

A. It's the complaint that was filed.

Q. Okay. In the – in the matter concerning Senate Enrolled Act 483?

A. Yes.

Q. I'd like you to turn to page 10, which specifically addresses some of the issues or the issues that Concerned Clergy has identified as part of this lawsuit. In

* * *

[16] So they would also end up, more than likely, having to take a day off from work, in order to obtain this information.

And then, too, some people are not from here. And from experience, obtaining a birth certificate out of state is a little more difficult than getting one here –

Q. Uh-huh.

A. – and is more costly.

Q. At any point either during the – the course of this litiga – or legislation passing through the legislature or to the present day, have any of your members come to you and said that – or expressed their con – concerns, first of all, about Senate Enrolled Act 483?

A. It's a fact that was discussed at a full meeting.

Q. Okay, it was discussed at a full meeting. Have any members of the Concerned Clergy indicated to you that they don't have photo identification?

A. No.

Q. Have any members of Concerned Clergy indicated to you, or the organization at the [17]

meetings, that they would be discouraged from voting because of Senate Enrolled Act 483?

A. Yes.

Q. Who would that have been?

A. We have a couple of members. One of them's name is Pat. And I talked to Al Rhodes and he was particularly bothered by the fact. And basically it was because most members have lived in their neighborhood for a number of years, and they vote at the same place all the time. In fact, I don't like it, personally.

Q. Let's – let's discuss, first, their concerns about – I mean, they – they've been voting the same place for a long time and have lived in the area. What about Senate Enrolled Act 483 offends them?

A. Well, from experience when you've lived somewhere 20, 30, sometimes 40 years, everybody at the precinct knows you, because nine times out of ten, they use the same board people. And most people are just used to walking in, giving their name and – and voting. So they feel like it's almost like not being trusted to do the right thing.

* * *

[19] Those things are hard on people when you're poor. And then, when you add something like this, they feel it's unnecessary, and they just will give up. The stress of everyday living and surviving is enough.

And when you throw something else in there, they'll just throw up. They'll give up. And I understand where they're coming from.

Q. Okay. Let's – let's focus on you, again, for a second. Do you have a driver's license?

A. Yes, I do.

Q. Okay. If this law withstands the – the court challenge that it faces currently, and is law in the primary of 2006, is – or will you vote in the primary in 2006?

A. Uh-huh, because I'm a fighter.

Q. And when you say uh-huh, you mean "yes"? Is that what you –

A. Yes, I'm a fighter. I'm sorry.

Q. And I'm very familiar with the fact you're a fighter and respect that. And you won't have any – there – there won't be any problem

[20] MR. OSBORN: Well, strike that.

Q. Because the law requires that you will provide photo identification to the people at the polls?

A. Yes, but I'll complain about it.

Q. Okay. It won't prevent you from voting?

A. No, I'll vote and complain all at the same time.

Q. Has there been anybody who has told you that it – that it will prevent them from voting?

A. No. But hav – from experience having worked the polls, not only on the board, but as a poll watcher, and I used to be a vice precinct person, I have seen people challenged at the polls, and then the just throw their hands up and say forget it, and walk away, even though they can fill out the affidavit.

And – and I know from personal experience, I have had to convince people, you know, to fill out the affidavit, go ahead and vote. Most of them, they'll throw their hands up and say, forget it, this is [21] too much of a hassle. I don't have to be treated like this. And they'll walk away.

We – we lose more than we get back. We don't convince very many to go ahead and fill out the affidavit and vote. Most of them just say forget it, you know, I don't have to go through this, and – and walk away. And I – I've – I've experienced that and witnessed that myself in the past.

* * *

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DEFENDANT'S EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	No. 1:05-CV-00634 SEB-VSS

RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION TO CONCERNED CLERGY OF INDIANAPOLIS

Comes now Concerned Clergy of Indianapolis, by Margie Oakley, who, being duly sworn upon her oath, responds to the Interrogatories served upon the organization. Further, Concerned Clergy of

Indianapolis, by its counsel, files its response to the Request for Production of Documents served upon the Organization.

INTERROGATORIES

INTERROGATORY 1:

Please state the name, address, and organizational position of the individual(s) answering these interrogatories on behalf of the Concerned Clergy of Indianapolis.

ANSWER: Margie Oakley, Secretary, Concerned Clergy of Indianapolis, 3721 N. Riley Street, Indianapolis, Indiana..

INTERROGATORY 2:

Please define "members" as used by Concerned Clergy of Indianapolis in paragraph No. 52 of your complaint.

ANSWER: The members of the organization are people who have joined and have been voted in to the organization.

INTERROGATORY 3:

Please identify any by-laws or written policies of the Concerned Clergy of Indianapolis set forth the requirements for membership in your organization.

ANSWER: The relevant by-laws are attached.

INTERROGATORY 4:

Please identify any activities or programs in which your organization is engaged that support your allegation in paragraph No. 54 of your Complaint that you "advocate(s) for voting rights and that persons exercise their right to vote."

ANSWER: Concerned Clergy is involved in numerous such activities. Among other things, we have been involved in voter registration activities, we participate in Operation Big Vote, we have members who work at polling cites, we produce a weekly radio show on Indianapolis radio station WTLC which has addressed numerous topics including voting rights and voter protection. Please see attached documents.

INTERROGATORY 5:

Please identify the particular process utilized by the Concerned Clergy of Indianapolis that supports its conclusion in paragraph No. 56 of your Complaint that Senate Enrolled Act No. 483 will discourage poor persons from voting.

ANSWER: This conclusion is the product of our experience as an Indiana based civil rights organization. The process used was therefore our experience.

INTERROGATORY 6:

What records, if any, are kept by the Concerned Clergy of Indianapolis that identify:

1. The financial status of the members of the Concerned Clergy of Indianapolis.
2. Members of the Concerned Clergy of Indianapolis who possess driver's licenses.
3. Members of the Concerned Clergy of Indianapolis who possess photo ID.
4. Aggregate voting records of the members of the Concerned Clergy of Indianapolis.

ANSWER: We have no such records.

INTERROGATORY 7:

Is the Concerned Clergy of Indianapolis claiming associational standing for its member or anyone else? If so, please identify for what injuries Concerned Clergy of Indianapolis claims associational standing.

ANSWER: My attorney has explained to me that an association has the right to file a lawsuit for its members where the members could bring a lawsuit, the interests of the members are relevant to the organization and it is not necessary for the individual members to participate in the lawsuit. I believe these requirements are met here. Our members include both ministers and interested persons in the community. A number of our members may not, at the current time, have the identification required by the new statute and therefore may not be able to vote. Additionally, our members object to having to show their identification cards to vote in polling places where they are well known.

Additionally, my attorney has informed me that a party in a lawsuit may raise the interest of others where the party has a close interest to the third party and there is some hindrance to the third party raising those claims. Concerned Clergy raises issues for poor persons who are not in a position to raise the issues for themselves. The issues raised by this case are a perfect example of a situation where Concerned Clergy needs to raise claims for persons who are unable to raise them themselves.

INTERROGATORY 8:

Is the Concerned Clergy of Indianapolis claiming a direct injury to itself? If so please state that injury with specificity.

ANSWER: Yes. Concerned Clergy is an advocacy organization dedicated to advancing, and advocating for, issues of interest to minorities and poor persons. To the extent that these groups have less political clout, Concerned Clergy will have less clout as well.

* * *

[SEAL] **CHECKLIST FOR BUREAU OF MOTOR VEHICLES BRANCH**
State Form 48169 (12-96)

THE FOLLOWING ITEMS ARE NEEDED IN ORDER TO COMPLETE YOUR TRANSACTION:	
	POWER OF ATTORNEY
	POLICE CHECK
	NOTARIZED AFFIDAVIT
	NOTARIZED BILL OF SALE
	DEATH CERTIFICATE
	NOTARIZED LIEN RELEASE
	SIGNATURE OF SELLER/SELLERS
	BODY CHANGE
	ODOMETER AFFIDAVIT
	COPY OF DIVORCE PAPERS
	NAME CHANGE OR ONE AND THE SAME FORM
X	OTHER proof of add.
Name of customer Kristjan Kogerama	
Name of clerk Wendy [Illegible]	Date 9-27-05
VALID FOR 10 DAYS	
DO NOT WAIT IN LINE AGAIN. PRESENT THIS FORM TO ANY AVAILABLE CLERK.	

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

Affidavit of Kristjan Kogerma

Comes now Kristjan Kogerma, being duly sworn upon his oath, and says that:

1. I am currently residing in Indiana.
2. I formerly lived in Ohio where I was registered to vote.
3. I am an adult.
4. I am currently homeless.
5. I went to the Bureau of Motor Vehicles on Virginia Avenue in Indianapolis on Tuesday, September 27, 2005 to obtain new identification.
6. I presented my birth certificate and Social Security card, but I was told that I could not obtain an identification card because I did not have anything on it with proof of my address.
7. I have attached the form I received.
8. Inasmuch as I am homeless, I have no address.

VERIFICATION

I verify, under the penalty of perjury, that the foregoing is true. Executed on: 9/28/05

/s/ [Illegible]

Prepared by:

Kenneth J. Falk
Indiana Civil Liberties Union

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:05-CV-00634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,

Plaintiffs,

vs.

TODD ROKITA, et al.,

Defendants.

WILLIAM CRAWFORD, et al.,

Plaintiffs,

vs.

MARION COUNTY ELECTION BOARD,

Defendant,

and

STATE OF INDIANA,

Intervenor.

The deposition upon oral examination of **JOSEPH E. SIMPSON**, a witness produced and sworn before me, Linda Mayo Baynes, Notary Public, RPR, CP, CSR, in and for the County of Hamilton, State of Indiana; taken on the 8th day of September, 2005, at the offices of ClearPoint Legal, Inc., One Indiana Square, Suite 2525, Indianapolis, Marion County, Indiana; pursuant to Notice and the Indiana Rules of

Trial Procedure. This deposition was taken on behalf of the Marion County Election Board in the above-captioned matter.

* * *

[18] separately first.

Are – are you saying that if there are more people that vote in the election that you're going to get more votes?

A. Yes.

Q. Okay. And on what do you base that conclusion?

A. The fact is that, that's what election is all about, is obtaining as many votes to win, you know, as possible.

Q. No, I understand that. But you – what – what it seems to me that this paragraph is saying is that if there are more voters, then you would get those voters to support you?

A. Yes.

Q. And I'm asking you what leads to you that conclusion? I mean, is it possible, for example, that – that if someone else were to run against you, that – that more voters might all turn and vote for your opponent?

A. Any time you have a worthy opponent it does bring out more people, you know.

Q. Okay.

[19] **A. And – but I think that over my 12 years of running I've been able to maximize and continue to maximize each year because people begin to know who you are after each term and they feel comfortable to think that you're doing a good job, more people tend to want to come and vote for you.**

Q. So it's your experience as someone who has run for office a number of times that as the voters become more familiar with you, or the people who are are going to become voters become familiar with you, that you are likely to get their vote?

A. Yeah. My numbers from the first time I was on the board to where they are now is tot – is just, you know, a lot more.

Q. Okay. So it's increased over time?

A. Yes, its increased each year.

Q. You're interested in maximizing the number of persons who exercise their right to vote. Why – why are you interested in that?

A. Because I need to win.

Q. Well, I – that was the first part I think of the paragraph, but – but it sounds [20] as though the second part of it as – you are saying as a citizen, you're just interested in –

A. Get them more –

Q. – that happening.

What do you mean when is the – from that perspective, from the cit – perspective of a citizen, why is it in your interest?

A. Because I think people should have the right to vote, and - and that in my particular precinct I probably have 700 people, and it's been the same case when I was a precinct person. There were low turnout, and I think as the years went over - became, you know, as a precinct person who worked with these folks, to maximize, get the people to come out, I think, people are now beginning to show up. I've - I've a pretty good voting precinct now. And I want to continue that.

Q. Okay. Does that affect your ability to do your job as – as a township board member?

A. Yeah.

Q. How so?

[21] **A. If - if I don't get the numbers of votes, you know, to be able to win, I'm no longer there.**

Q. Okay. So from a purely pragmatic political viewpoint it's – it's important. Does it help you in any other way as – when you are actually – after you are elected, does it help you if there is a larger participation of the group of people who could vote for that particular office?

Is that convoluted?

A. Yeah.

Q. If more people – if more people participate, does that help you as an office holder in any way?

A. Yes.

Q. How so?

A. It lets me know that there is a lot of people paying attention.

Q. Okay. Paragraph 84, and that's on the next page, indicates that – that you are opposed, first of all, to – to showing your identification; is that right?

A. Correct

Q. You said earlier that you just went [22] through the process of renewing your driver's license?

A. Yes.

Q. So you actually have a current driver's license; is that correct?

A. Yes.

Q. When we get to the next election cycle, which would start – or at least the next election would be the primary of May – in May of 2006.

A. Uh-huh.

Q. Is your opposition to having to show identification going to keep you from showing your driver's license during the primary?

A. Repeat that.

Q. When you go to vote –

A. Uh-huh.

Q. – assuming you go to vote –

A. Uh-huh.

Q. – in – in the primary of 2006 –

A. Uh-huh.

Q. – will you use your identification as required under Senate Enrolled Act 483?

A. If I want to – I mean, if it's law, I will have to show it.

[23] Q. Okay. Assuming its law?

A. Yeah.

Q. You would show it?

A. Yeah.

Q. Okay. And there would be nothing – aside from – from your having to pull the – the license out of your wallet or wherever you keep it, would there be any inconvenience to you to show it to a precinct election board?

A. Yeah. I'm opposed to showing my ID to anybody that necessarily don't need to see it.

Q. Why are you opposed to that?

A. Because people can take your information and use it, you know. I mean, this is not a fair world, and there are a lot of fraud, you know, people taking your Social Security number, taking your basic information. All they need is basic Information. They can create another ID, and your credit report is pretty messed up. I mean, that's one of the common fear –

Q. Okay.

A. – that I have about showing my ID at [24] **– at any time. I understand when I go to a grocery store and I'm using my debit card or, you know, using charge card that is, you know, part of the requirement, because I want them to show – require them to show my ID in order to prove that I am who I am.**

Q. At a grocery store?

A. Yes.

Q. And why is that important then?

A. Because they need to know that I'm Joe Simpson.

Q. Okay. Now, the grocery store you're talking about, do you know the people at the grocery store?

A. No.

Q. Okay. So these are complete strangers to you, then?

A. Yeah. But they are in charge of me obtaining that groceries which I – I need very bad.

* * *

[79] Q. You were asked some questions concerning your knowledge of people in your [80] district who have voted in the past without possessing ID or who would object to showing ID. Had there anyone in your district come up to tell you that they objected to this –

A. Yes.

Q. – new law?

A. Yes.

Q. And what did they tell you?

A. That they felt that this was another mechanism to stop them from voting.

Q. And did they indicate to you they felt it would be difficult for them to comply?

A. No.

* * *

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

JOSEPH SIMPSON'S RESPONSE TO INTERVENOR-DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION

Comes now Joseph Simpson, being duly sworn upon his oath, and by his counsel, and files responses

to Intervenor-Defendant's Interrogatories and Request for Production of Documents.

INTERROGATORIES

INTERROGATORY 1:

Please identify by names and address those voters in Washington Township that you assert in paragraph No. 81 of your Complaint that voted in the past but do not have any photo identification and will be precluded from voting by implementation of Senate Enrolled Act (SEA) No. 483.

ANSWER:

I do not have specific names or addresses. However, I have been told this by a number of persons.

INTERROGATORY 2:

Please identify the particular process that you utilized to determine that voters in your precinct will become discouraged by the cost and inconvenience of obtaining the photo identification necessary to vote as alleged in paragraph No. 82 of your Complaint.

ANSWER:

I have been a precinct committeeperson for 18 years during which time I have worked at, and observed, the polls in my neighborhood. I have observed voters and voter behavior. I am aware of the identification

requirements demanded by both the health department and the Bureau of Motor Vehicles in order to obtain a birth certificate and identification. I used this knowledge and experience to draw the above conclusion.

INTERROGATORY 3:

Please identify by names and address the voters in your precinct that you determined will become discouraged from obtaining the identification required by SEA No. 483 because of the cost and/or inconvenience.

ANSWER:

I do not know the names of any such persons.

INTERROGATORY 4:

What is the causal relationship, if any, of maximizing the number of persons voting in your precinct and your own ability to be elected as referenced in paragraph No. 83 of your Complaint?

ANSWER:

I am a Democratic official in a precinct that has a majority of Democratic voters. The chances are that the more people who vote means that the more Democrats who will vote for me. Therefore, from a purely selfish perspective, I think the more people

who vote means the more people who vote for me. However, as I indicated in the Complaint I have a basic interest in maximizing the number of persons who vote, regardless of who they vote for.

INTERROGATORY 5:

What records, if any, are kept by Joseph Simpson that identify:

1. The financial status levels of voters in your precinct.
2. Voters in your precinct who possess Indiana driver's licenses.
3. Voters in your precinct who possess government-issued photo ID.
4. Aggregate voting records in your precinct

ANSWER:

I do not have any such records.

INTERROGATORY 6:

Is Joseph Simpson claiming associational standing for voters in his precinct or anyone else? If so, please identify for what injuries Plaintiff claims associational standing.

ANSWER:

I am not claiming associational standing because I am not an association. However, my attorney has indicated to me that a candidate clearly has standing to raise legal claims on behalf of voters and I therefore am raising the right of voters to be able to vote without unreasonable, unlawful and unconstitutional restrictions.

INTERROGATORY 7:

Has any State or federal agency issued a valid and current photo identification to you? Please specify the type and originating agency.

ANSWER:

I have a driver's license issued through the Indiana Bureau of Motor Vehicles.

INTERROGATORY 8:

Is Joseph Simpson claiming a direct injury to himself? If so please state that injury with specificity.

ANSWER:

Yes, I am claiming direct injury. As indicated above, as a candidate I am damaged by anything that will reduce the number of persons who may vote for me. The challenged statute will make it more difficult to vote and this damages me. Moreover, as a personal

matter I strongly object to having to show my identification when I have applied for and received a voter registration card after swearing to the truth of matters in the application. Moreover, I object to having to show my identification where I vote inasmuch as I am well known there.

* * *

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:05-CV-00634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,

vs.

TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs

vs.

MARION COUNTY ELECTION BOARD,
Defendant,

and

STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of **WILLIAM A. CRAWFORD,** a witness produced and sworn before me, Linda Mayo Baynes, Notary Public, RPR, CP, CSR, in and for the County of Hamilton, State of Indiana; taken on the 8th day of September, 2005, at the offices of ClearPoint Legal, Inc., One Indiana Square, Suite 2525, Indianapolis, Marion County, Indiana; pursuant to Notice and the Indiana Rules of Trial Procedure. This deposition was taken

on behalf of the Marion County Election Board in the above-captioned matter.

* * *

[31] requirements?

A. Those that have –

Q. Yeah, photo identification.

A. There's no inconvenience for me. I have driver's license and passport. Other than the offense of being compelled by the government to produce a photo ID to exercise the most basic and fundamental right that I have, the right to elect those who would govern me. And I find that inconvenient beyond the pale. There is no compelling governmental reason for them to do that in my mind. And to me, you know, it's a Boston Tea Party issue.

Q. Is it going to keep you from voting in 2006?

A. Absolutely not.

Q. Okay. You'll show ID if it's required at that time?

A. If that's the only way I will vote, I could vote, I will. But, hopefully, the courts will see the reason and knock this thing out.

Q. You indicate in Paragraph 33, which is on Page 8, that you plan to stand for [32] reelection in 2006, which I'm sure that there are many people who are very happy with that. And you have an interest in

ensuring that as many people in your district as possible have the opportunity and ability to vote.

Could you explain why that's of interest to you? I mean, there will be some of those people, will there not, who will vote against you or who could potentially vote against you?

A. Absolutely. But over the years, having gone through now 17 primary elections and 17 general elections, I generally find that the greater the turnout, the better, the more involved people get. And I have an interest in a great turnout.

And in particular, even if they vote against me – If large numbers of people vote against me, that's an indication, then, I'm not doing what the people want.

So, I have a great interest in a large turnout and would always try to get as many people as possible to the polls. A hundred percent if I could.

* * *

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

Plaintiff William R. Crawford's Response to Interrogatories and Request for Production of Documents

Comes now Representative William R. Crawford, being duly sworn upon his oath, and files his response to the Interrogatories served upon him by the State of Indiana, Intervenor. And, comes now Representative

William R. Crawford, by his counsel, and files his response to the Request for Production of Documents served by State of Indiana, Intervenor.

INTERROGATORY 1:

Please identify the persons in House District 98 who have voted in the past who do not have the picture identification required by Senate Enrolled Act (SEA) No. 483 of whom you have personal knowledge as alleged of in paragraph No. 29 of your Complaint.

ANSWER:

I do not have the specific names of my constituents. However, as the challenged statute was being debated in the General Assembly, and being discussed in the media, I was approached by numerous persons at community meetings and churches who specifically indicated that they had voted for years and they did not have the identification required by the new law. Constituents who stated that they had older relatives who did not have the required identification issued by the Bureau of Motor Vehicles, even though they had voted regularly, also approached me.

INTERROGATORY 2:

Please identify what particular process you utilized that supports your conclusion in paragraph No. 31 of your Complaint that voters in your district will not

vote or will be discouraged from voting because of the identification requirement contained in SEA No. 483.

ANSWER:

I have been watching the polls in Indianapolis for more then 40 years. It is apparent to me that voters are easily discouraged and if obstacles are placed in their way, either through challenges by persons at the polls or through additional requirements to vote, they simply will not vote. Therefore, the process I used to draw the above conclusion is my life experience.

INTERROGATORY 3:

If any particular process or survey was used please identify:

A. Who conducted the process;

B. The sampling used; and

C. The name and addresses of voters who indicated they will not vote or be discouraged from voting by operations of SEA No. 483.

ANSWER:

As I indicated above, I did not use any particular process other than a lifetime of experience with elections and voting.

INTERROGATORY 4:

Are you claiming associational standing for voters and potential voters who reside in the district you represent (House District 98) or anyone else? If so, for what injuries are you claiming associational standing?

ANSWER:

I am not claiming associational standing as I am not an association. However, my attorney has indicated to me that a candidate clearly has standing to raise legal claims on behalf of voters and I therefore am raising the right of voters to be able to vote without unreasonable, unlawful and unconstitutional restrictions.

INTERROGATORY 5:

Has any state or federal agency issued a valid and current photo identification to you? If so, please identify.

ANSWER:

I currently have a driver's license issued by the State of Indiana. I also have identification issued by the Indiana House of Representatives. However, it does not have an expiration date and, therefore, I do not believe it would be valid identification for purposes of the law challenged in this case.

INTERROGATORY 6:

Are you claiming a direct injury to yourself? If so please state that injury with specificity.

ANSWER:

I am claiming direct injury to myself. To the extent that the challenged statute makes it more difficult for persons to vote it means that there are less persons available to vote for me. To the extent that it discourages persons from voting it will diminish citizen's interest in the electoral process, which will injure me in my efforts to be re-elected. Additionally, I am personally offended about having to show identification to people who know me and in a polling place where I have voted for years. Being required to show the identification is direct injury. Furthermore, I have spent my entire adult life working for civil rights. I have a personal interest in insuring that the most precious of rights, the right to vote, is maximized and not reduced.

INTERROGATORY 7:

Please identify any records that are kept by you that identify:

1. The financial status of voters and potential voters in House District 98.
2. Voters and potential voters in House District 98 who possess driver's licenses.

3. Voters and potential voters in House District 98 who possess photo identification.

4. Aggregate voting records in House District 98.

ANSWER:

I do not have any such records.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, vs. TODD ROKITA, *et al.*, Defendants.	CAUSE NO: 1:05-CV-0634-SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, vs. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

APPENDIX OF EVIDENCE IN SUPPORT OF DEMOCRATS' MOTION FOR SUMMARY JUDGMENT

(Filed Oct. 31, 2005)

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, vs. TODD ROKITA, *et al.*, Defendants.	CAUSE NO: 1:05-CV-0634-SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, vs. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

AFFIDAVIT OF THERESA CLEMENTE

(Filed Oct. 31, 2005)

Theresa Clemente, being first duly sworn upon his oath, deposes and says:

1. I was born in 1927 in Boston, Massachusetts, and lived there most of my life. I have been married

to my husband, Donald J. Clemente, for 53 years. I reside at 2215 Wawonaissa Trail, Fort Wayne, Indiana 46809. We had a car while in Boston which my husband used to get to work, but I never got a driver's license and relied on trolleys and cabs to get around town.

2. Fourteen (14) years ago we moved to Fort Wayne to be near our son, our only child, who is a veterinarian in this area. I did not get a driver's license after moving to Indiana.

3. Earlier this year I read in the newspaper that Indiana had passed a law requiring voters to have a photo ID in order to vote. I did not want to lose my right to vote, so I made a trip this past July to the Indiana Bureau of Motor Vehicle office at Southgate Mall in Fort Wayne. On my first visit, I brought along my Social Security card, my voter registration card, my property tax bill, a utility bill, and a credit card. However, when I arrived at the BMV branch I was told by personnel there that I needed a copy of my birth certificate before I would be issued a photo ID card.

4. I then returned home, got a copy of my birth certificate, and went back to the same BMV branch. This time, I was told that I needed to get a certified copy of my birth certificate, so I was turned away again without being issued a photo ID.

5. I then sent away to Boston for a certified copy of my birth certificate. I was told that it would cost me $28.00 to get a certified copy of my birth

certificate, so I sent a check for $28.00 along with my request. I then received in the mail a certified copy of my birth certificate 14 days later.

6. After receiving a certified copy of my birth certificate, I returned for the third time to the Southgate BMV branch. I was told by personnel that I still could not receive a photo ID because my birth certificate showed my name as Theresa Grady and I was now Theresa Clemente. I told BMV personnel that I was married and that my name had been Theresa Clemente for 53 years now. But for some reason, the BMV staff had filled out the paperwork for my ID using the name on my birth certificate, not the name on my Social Security card, credit card or utility bill, property tax bill or voter registration card. I was then told by BMV officials that I would have to produce a certified copy of my marriage certificate and I was turned away again without being issued a photo ID.

7. I plan to make a fourth trip to the local BMV branch with a certified copy of my marriage certificate to try once again to obtain a photo ID card so that I can vote in the next election.

8. I cannot speak for other persons, but I can say that my experiences in attempting to obtain a photo ID card from the BMV have been humiliating, time-consuming, and extremely frustrating. I certainly hope this is not the price I and others without state or federal issued photo identification will have to pay in order to continue to exercise our right to vote in the State of Indiana.

Further affiant sayeth not.

/s/ Theresa Clemente
Theresa Clemente

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, a Notary Public, in and for the State of Indiana, County of Allen, on this 4th day of October, 2005.

/s/ Robert M. Koehl
Printed: Robert M. Koehl
Notary Public

County of Residence: Allen
My Commission Expires: Oct. 31, 2009

[SEAL] OFFICIAL SEAL
ROBERT M. KOEHL
NOTARY PUBLIC – INDIANA
ALLEN COUNTY
My Comm. Expires Oct. 31, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, vs. TODD ROKITA, *et al.*, Defendants.	CAUSE NO: 1:05-CV-0634-SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, vs. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

AFFIDAVIT OF MARJORIE R. HERSHEY

Marjorie R. Hershey, being duly sworn upon her oath, deposes and states as follows:

1. I am a Professor of Political Science at Indiana University.

2. I was engaged by Plaintiffs Indiana Democratic Party and Marion County Democratic Party to analyze and provide a report on Indiana's new Photo ID Law for the purposes of determining its effect on Indiana voters and voter turnout.

3. Attached to this affidavit is a true and accurate copy of the report I prepared, entitled "Raising the 'Costs of Voting': What Will Be the Effect of Indiana's New Photo ID Law on Voter Turnout."

FURTHER AFFIANT SAYETH NOT.

I swear, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

/s/ Marjorie R. Hershey
Marjorie R. Hershey

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Subscribed and sworn to before me, a Notary Public, in and for the State of Indiana, County of Monroe, on this 25 day of Oct., 2005.

/s/ Cheryl K. Ammon
Notary Public

County of Residence: Lawrence
My Commission Expires: March 18, 2008

CHERYL K. AMMON
NOTARY PUBLIC
STATE OF INDIANA
LAWRENCE COUNTY
MY COMMISSION
EXP. MAR. 18, 2008

Raising the "Costs of Voting": What Will Be the Effect of Indiana's New Photo ID Law on Voter Turnout?

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Introduction: How Much Do We Know About Voter Turnout?

Political science researchers have been studying voter turnout for more than a century. We know more about it than almost any other aspect of American politics. The extraordinary attention devoted to turnout reflects in part the vital role of elections in any democratic state. It also stems from the ease of measurement and analysis; election results are public and votes are easy to measure, so it has generated a huge literature and a substantial amount of agreement on its findings. A very partial list of sources at the end of this report indicates the amount of research time and effort put into this area of study.

The purpose of this report is to detail the findings of turnout research relative to the following questions: Is the new law that requires all Indiana voters to present state or federally-issued photo identification prior to casting their ballot likely to affect voter turnout rates in the state? To what extent? Is such a requirement likely to affect some groups disproportionately relative to others? And how would such findings affect representation in the state of Indiana?

Even though the law has not been implemented at this time, we have many other types of analyses on which to base solid estimates of its probable impact. In fact, in judging the effects of any measure that is not yet in force, that must inevitably be our best means of prediction.

How Likely Is an Individual to Vote?

No act in a democratic political system is more important than voting. It is the means by which decisions of government are linked with the "consent of the governed," as the Declaration of Independence requires. The spread of the suffrage to groups of Americans who were not originally enfranchised was guided by a variety of considerations, including the belief that a government will be accountable to its citizens only if they have the right to remove its leaders from office. This fundamental right is the guarantor of the other basic rights in a democracy, including freedom of speech and of the press, the freedom to worship, and the right to be free from arbitrary treatment by agents of the government ("The Right to Vote," 2005).

The degree to which citizens exercise their right to vote – voter turnout – has long been considered a measure of the effectiveness of a democracy. In the United States, declines in voter turnout are often interpreted as evidence of problems in the functioning of the political system; low-turnout elections are frequently cited as raising questions about the legitimacy of public officials elected in them. Although

some have argued that low rates of voter turnout could signify widespread public satisfaction with the status quo (Berelson, 1954), this argument has been widely refuted (e.g., Walker, 1966). The United States Congress has spent a considerable amount of time devising legislation (including constitutional amendments 15, 19, 24, and 26, the Voting Rights Acts, and the National Voter Registration Act) to ensure that the right to vote is held by the vast majority of adult citizens and is not denied to citizens on the basis of irrelevant or pernicious criteria. As Alexis de Tocqueville wrote in his celebrated work *Democracy in America* (1835), "Once a people begins to interfere with the voting qualification, one can be sure that sooner or later it will abolish it altogether. That is one of the most invariable rules of social behavior."

When political scientists examine voter turnout rates, the predominant approach is a rational choice or economic analysis. In this framework, people are likely to vote as long as the perceived costs of voting do not outweigh the perceived benefits. A classic formulation is that of Steven Rosenstone, an expert on electoral politics: "People participate in politics when they get valuable benefits that are worth the costs of taking part" (Rosenstone and Hansen, 2003, p. 10).

What kinds of costs might be involved in casting a vote? There are a variety of individual costs that must be paid. It takes time to get to the polls, to wait in line, and to cast a ballot. That time cannot be used to achieve other goals, so there are benefits forgone.

Most prospective voters need transportation to their polling place; thus they will pay costs in the form of gasoline prices or individual energy. In addition to the individual costs, there are structural barriers to voter participation. In every American state except North Dakota, people must register to vote, and in most states voter registration requires a separate trip to a different location than the one at which they will vote (and therefore information as to where that registration site is located), or an effort to locate a mail-in form with which to register, at a time when the election may not yet be generating the high levels of media coverage and public interest that facilitate information gathering. Residence requirements, physical barriers such as difficulties of accessibility to disabled persons, insufficient parking, too few voting machines relative to the size of the turnout, confusing ballot format – all of these are structural factors that raise the cost of voting to the individual. In short, anything that makes it less convenient to vote is a cost to the individual who chooses to exercise this fundamental right.

What, then, are the benefits of voting? Most voters feel a sense of obligation, civic pride, or community cohesion in casting a ballot. But although voting is a fundamental right in a democracy, it is clear to most citizens that in any given election, because of the large size of most constituencies, the likelihood that their single vote will make a difference in the election's outcome is very slim. There have been celebrated instances in which election

results have turned on a very small number of votes; the presidential election of 2000 is an excellent example. But these have been the exceptions; most elections are won by comfortable margins (Ansolabehere and Snyder, 2002)..

The result is what theorists call the "paradox of voting": voter turnout produces collective benefits for the whole community, such as a validation of the democratic character of the city or state, and a sense of legitimacy for the election results, but the actual value received by each individual from casting a ballot is relatively small and difficult to define with precision. It is an intangible benefit, whereas the costs paid to obtain it can be quite tangible. In a large electorate, this is likely to produce what is called the "free-rider problem" (Olson, Chapter 1): if the benefits of a particular action are collective, in that they will accrue to the whole community whether or not I participate, as opposed to an outcome that will guarantee benefits only to those who participate, and if the benefits I can personally expect from my participation will be intangible while the costs are measurable, then it is rational for me to abstain and let other members of the electorate pay those costs instead, because I will get the collective outcome anyway. As long as at least one person goes to the polls, the collective good of obtaining an election result will be met with or without my participation.

In such an activity, where the costs are perceptible though not large for many people, and the benefits are collective and intangible, "small changes in

costs and benefits alter the turnout decision for many citizens" (Aldrich (1993: 261). The decision to turn out to vote is made at the margin, and the determining factor will be the relative balance of costs and benefits. Because the benefits are likely to be the same for all voters, any increase in costs, however slight, should therefore affect the individual's likelihood of voting.

When the Costs of Voting to the Individual Are Raised, the Likelihood of Voting Goes Down.

Empirically, researchers have shown convincingly that the rules implemented to administer elections can encourage or depress voter turnout, and that where obstacles to voting are greater, turnout will be lower (see, for example, Wolfinger and Rosenstone, 1980, p. 61; Conway, 1991, Chapter. 4). As Thomas E. Patterson, director of the Vanishing Voter Project at Harvard University, writes, "Scholars are in full agreement that the more 'costs' placed on the potential voter, the lower the participation rate" (Patterson, 2002, p. 130). Similarly, a well-known student of comparative voter turnout concludes that "Where institutions generate disincentives to vote, turnout suffers" (Jackson, 1987: 419).

This has been apparent since the beginning of the American republic. In the first five American presidential elections (1788-1804), when transportation was primitive, information about where to vote was difficult to find, and getting to the polls could

involve a substantial investment of time and risk, only an estimated 4 to 6 percent of those Americans who were eligible to vote made it to the polls (Teixeira, 1987, p. 9). Note that the proportion of citizens who had the right to vote was small to begin with, but only a tiny slice of that eligible electorate actually turned out to vote. These elections were the earliest in our history, after Americans had fought a long and devastating war to obtain that right, so those eligible should have had no lack of interest or motivation to exercise it. Yet the costs of travel and information were sufficiently high to keep the turnout extremely low. As transportation systems improved during the next two decades, political information became more widely disseminated, and the electoral system ran more smoothly, turnout jumped to 27 percent in 1824, 58 percent in 1828, and 80 percent in 1840 (Halperin, 1999: 74).

Another painfully clear example of the finding that an increase in costs – even a small increase – will drive down voting turnout is the impact of election administration and electoral laws in the eleven southern states during the Jim Crow period, from the mid-1870s until the late 1960s. A series of hurdles of varying severity were placed in the path of black male Americans who had been enfranchised earlier by the Civil War Amendments, and black female Americans granted the suffrage by the 19th Amendment in 1920. Some of these burdens were disqualifying in themselves, such as the "white primary," in which the Democratic Party was defined as a private

association open only to whites, and there was no active Republican primary in which blacks could cast a vote. Others were relatively small burdens; the poll tax, for instance, was generally minimal, typically only a dollar or two, but had to be paid several months prior to Election Day and the receipt kept and shown at the polls, yet it was sufficient to keep large numbers of black Americans from voting. The combined effect of these costs of voting for blacks in the South was that throughout this period, and until the structural changes of the 1950s and 1960s began to reduce those costs, black turnout in Mississippi rose no higher than 5 percent, and in Alabama and South Carolina no higher than 13 percent.

Studies of the impact of electoral law on voting rates have shown for more than 40 years that increased costs of voting would drive down turnout. The 1963 Report of the President's Commission on Registration and Voting Participation, for example, concluded that one of the major reasons for nonvoting was the restrictive voting laws under which nonvoters were more likely to live.

One example of a provision that raises the costs of voting is the requirement that citizens register before being able to exercise their right to vote. Although the photo identification requirement in the new Indiana law at issue applies only to registered voters, research on the impact of voter registration laws is relevant here because it is directly analogous to the burdens posed by the new Indiana photo ID law. In the case of the new Indiana law, prospective

voters who do not possess state- or federally-issued photo identifications would be required to take an additional trip, most likely to their Bureau of Motor Vehicles office, to acquire one, and perhaps to take a second trip to obtain the necessary proof (in the form of a birth certificate) to get the state or federally-issued identification. Similarly, in the case of voter registration laws, prospective voters are required to take an additional trip to register to vote or to find out how to obtain a mail-in registration form and then to comply with its provisions and send it. In both cases, the requirements make voting more costly.

Wolfinger and Rosenstone (1980, p. 61) confirm that "Registration raises the costs of voting. Citizens must first perform a separate task that lacks the immediate gratification characterizing other forms of political expression (such as voting). Registration is usually more difficult than voting, often involving more obscure information and a longer journey at a less convenient time, to complete a more complicated procedure. Moreover, it must usually be done before interest in the campaign has reached its peak."

As Table 1 shows, most states require voters to register to vote at least 30 days in advance of Election Day, the maximum interval permitted by federal law. Six states have much more liberal registration requirements, however, allowing voters to register when they come to vote on Election Day; a seventh state (North Dakota) does not require voter registration at all. These states' rules minimize the inconvenience for

voters by eliminating the need to make a second trip for the purpose of registering.

How did these seven states, whose registration rules impose the least cost on prospective voters, rank in voter turnout levels in the 2004 elections? Five were in the top six states in voter turnout; the other two ranked 19th and 41st. In the 2000 presidential election, turnout in these seven states was 15 percent greater than in other states (Patterson, 2002, p. 133); in 2004, it was 9 percent greater. An average of 71.5 percent of voting-age citizens cast their ballots in 2004 in the seven states with Election Day registration or no registration at all, compared to a national average of 63.8 percent, and an average of 62.6 percent in states where registration was required at a separate time prior to Election Day.

Earlier studies also showed that the length of the interval between the close of registration and Election Day makes a difference in voting rates; Rosenstone and Hansen report (2003: 208), for instance, that "The longer before an election people must act to ensure their eligibility to vote, the more likely they will fail to do so. Compared to citizens who live in states that allow registration right up to election day, citizens who live in states with thirty-day closing dates are 3.0 percent less likely to vote. . . . Early closing dates, by requiring people to register long before campaigns have reached their climax and mobilization efforts have entered high gear, depress voter participation in American elections."

It might be argued that these findings occur because states with particularly civic-minded political cultures are both more likely to permit Election Day registration and also more likely to have higher voter turnouts. We can test for the possibility of spurious correlation by looking at change over time in states that have adopted Election Day registration; if their voter turnouts went up after the adoption, then it would seem that the reduced cost of voting made the difference. In fact, research shows (Fenster, 1994) that in Minnesota, Maine and Wisconsin, voter turnout rates increased *after* Election Day registration was permitted. Further, when national voter turnout declined in the 1976 presidential election, the two states using Election Day registration at that time, Minnesota and Wiwscon.in, actually experienced an increase in voter turnout (Smolka, 1977, p. 45). Because of these findings, Fenster (1994) estimates that if Election Day registration were implemented in all states, voter turnout rates across the nation would increase by 5 percent.

The costs imposed by voter registration also play a role in driving down American voter turnouts relative to those of other western industrialized democracies. During the 1980s, G. Bingham Powell found (1986: 23), an average of 80 percent of the eligible electorate in 20 developed democracies went to the polls, at a time when the average turnout in American elections was 54 percent. More recent surveys by the most trustworthy source of such comparative turnout statistics, the International

Institute for Democracy and Electoral Assistance (IDEA, a nonpartisan international organization supported by contributions from 23 member nations, including Australia, the Scandinavian nations, India, and Spain; http://www.idea.int/vt/intro.cfm), show a continuing differential between American voter turnout and that of most other industrialized democracies. The only democratic nation with lower voter turnout than that of the United States is Switzerland, and its low turnout reflects the fact that federal elections in Switzerland are not as consequential for policy decisions as are cantonal elections.

This differential cannot be explained by historical or cultural factors. The political culture in the United States has long been regarded as more supportive of political participation than the political culture of many democracies in Europe and East Asia. Political discussion is more frequent in the U.S. and campaign participation is higher than in most other democracies. So why is our voter turnout lower? Among the main reasons is that voter registration and other election laws contribute to lower turnout in the U.S. (Conway, 1991: 109). Halperin (1999: 71) argues that "the single most important reason for the drastic decline in voter turnout during the twentieth century stems from the burdensome and outdated voter registration laws most states implemented at the turn of [twentieth] century. If the statistics about voters and elections show any one thing clearly, it is that voter registration laws are the principal reason why so few people vote."

The election laws of many other democracies provide for automatic voter registration or government-conducted registration systems, in which, for example, people are automatically certified as eligible to vote when they come of age and obtain identity cards, or government-sponsored canvassers go from house to house before each election to enlist voters (Piven and Cloward, 2000, p. 17). The American system of voter registration, in which the citizen must take the initiative, is more difficult, complicated, and time-consuming than that of almost any other democracy. Of the 20 democracies in Powell's study, only France and the United States leave voter registration to the citizen's own initiative.

In short, researchers concur that the registration requirement, which is analogous to the requirement that prospective voters obtain government-issued photo identification in advance of going to the polls in the sense of having to make a separate trip or take a separate step (in the case of mail-in registration) to establish the credentials needed to exercise one's right to vote, drives down voter turnout, most likely by raising the cost of voting to the individual.

What Do We Know About the Magnitude of This Impact?

With regard to the magnitude of the effect of the voter registration requirement on voter turnout, Rosenstone and Hansen find that (2003: 206), "With the adoption of registration laws [in the late 1800s and

early 1900s], voter turnout in the North dropped 17 percent between 1896 and 1916." Powell (1986), in his comparative analysis of western industrialized democracies, concludes that in the 1970s, the need for US citizens to take the initiative themselves to register to vote (as opposed to the systems of automatic voter registration maintained by most other democracies) decreased voting turnout by 16 percent compared with turnout rates in other democratic nations.

Mitchell and Wlezien (1995: 188-189) show that if the costs of voter registration were substantially reduced, by such means as eliminating the closing dates for registration, increasing the hours that registration offices remain open, and regulating the purging of voter rolls, then there would be an estimated increase in voter turnout of 8.6 percent on average, and in some states, by more than 14 percent. Mitchell and Wlezien estimate that Indiana's voter turnout would show a 9.7 percent increase. So simple a step as expanding the open hours of voter registration offices would be likely to increase Indiana's voter turnout by 1 percent. Studies of the impact of the National Voter Registration Act of 1993 (the "motor voter" law) have found, using survey research, that turnout increases resulting from the law ranged from 4.7 percent to 8.7 percent (Highton and Wolfinger, 1998).

To what extent are these estimates relevant to the new Indiana photo ID law? A change in the voter registration system would clearly affect a greater proportion of citizens because all but one state require

all citizens to register to vote, whereas the new law would affect only those prospective voters who are already registered but do not have the type of government-issued photo identification required by the new law. Therefore the impact of the new law on voter turnout would be considerably smaller.

The impact would, however, also be considerably more targeted than that of a change in voter registration requirements. As the next section shows, citizens who lack government-issued photo identifications come disproportionately from groups that are already disadvantaged, and these groups are among those whom political science research has found to be least able to pay the costs of voting.

Increasing the Cost of Voting Affects Some Groups More than Others.

Some types of people are better able than others to accept increased costs of voting without being deterred from going to the polls. Rosenstone and Hansen (2003, page 209) point out that, "The legal restrictions on the exercise of the franchise adopted in the early part of the century and maintained to the present day place significant burdens on American citizens and lower the probability that they will participate in political life. Although neutral on their face, the conditions on the use of political rights burden the least advantaged much more than the most advantaged. In fact, restrictive election laws afflict minorities, the poor, and the uneducated twice

over: They make it doubly difficult for the disadvantaged to participate in politics, and they make it doubly doubtful that political leaders will devote the resources to efforts to mobilize them."

It is very well established in the turnout literature that socio-economic status (SES) is more closely correlated with voter turnout than almost any other demographic variable (Wolfinger and Rosenstone, Chapter 2): people with lower SES are substantially less likely to vote than are higher-SES people. Of the three components of SES (income, education, and occupational status), the strongest influence on turnout comes from the individual's level of education. According to the U.S. Census (*Statistical Abstract of the United States, 2004-2005*), only 23.6 percent of those who never attended high school voted in the 2004 election, compared with 34.6 percent of those with some high school education, 52.4 percent of high school graduates, 66.1 percent of those with some college education, 72.6 percent of college graduates, and 77.4 percent of those with postgraduate degrees. The monotonic nature of the relationship between education and voter turnout increases the likelihood of a causal connection.

Empirical studies have further demonstrated that variations in the costs of voting have the greatest effect on those with the least education (Wolfinger and Rosenstone, 1980, p. 62; see also Leighley and Nagler, 1984). The nature of the causal connection is also clear. People with higher education and greater income are more likely to have discretionary income,

a car to get to the polls, a flexible schedule to allow them to vote and to fulfill any other requirements pre-requisite to voting (such as obtaining the necessary photo identification), and access to the media of communication that tell them where to find their registration or identification center or polling place (Wolfinger and Rosenstone, 1980, pp. 20-22). People with more education and higher income also do not have to accept the opportunities forgone that poorer and less educated people do: going to vote (or to obtain a birth certificate or a photo identification) rather than working to pay the rent, for example. *It is significant that we do not find this correlation in most other western democracies, where the costs of voting are not as high.*

As Rosenstone and Hansen explain, their analysis of data from the American National Election Studies cumulative data file shows that "Early closing dates [for voter registration, which increase the costs of voting] have their greatest impact on the people who are least likely to vote anyway. Given that they lack the resources to overcome the costs of turning out, it is surely no surprise that they also lack the resources to offset the additional burdens of registration. Sixty-day closing dates reduce the turnout of the poorest Americans by 6 percent but depress the turnout of the wealthiest Americans by only 3 percent. They diminish the turnout of the grade-school educated by 6 percent but lessen the turnout of the college educated by only 4 percent. Early closing dates, finally, inhibit African-Americans,

Mexican-Americans, and Puerto Ricans slightly more than other citizens" (Rosenstone and Hansen, p. 208). They conclude (p. 208, note 90) that "little can be done to change the prospects of people who are almost certain to turn out, but much can be done to change the prospects of people who may or may not turn out." Comparative state studies also show that laws raising the cost of voting are a far greater impediment to poor and less educated people than they are to wealthy and more educated people (Kim, Petrocik, and Enokson, 1975: 107-131). The difference in turnout between states whose laws facilitate voter turnout and states whose laws do not averages about 7 percent (Kim, Petrocik, and Enokson, 1975: 199). In short, slight increases in the costs of voting can deter those with the least resources (see Patterson, 2002: 131).

In the new Indiana photo ID law (Senate Enrolled Act 483 signed into law April 27, 2005), precinct election officials would be required to ask all registered voters for proof of identification before they can vote. There is only one form of identification allowed: a document issued by either the United States government or the State of Indiana that contains a photo of the individual, carries an expiration date, and has the same name on it as is on the individual's voter registration record. Anyone without such identification can be given a provisional ballot, but that ballot will not be counted unless the prospective voter provides the required photo identification or executes an affidavit saying that he or she is

indigent and can't get the identification without paying a fee, or has religious objection to being photographed, and does so in person at the county election board or before the circuit court clerk before noon of the second Monday following the election. This deadline occurs long after results will be settled in nearly every election, which of course drives down even the small benefit to the voter of being able to believe that his or her ballot will be the deciding vote in the contest.

As is the case with the registration requirement's closing date, these new requirements carry costs that fall differentially on different groups of citizens. Among these costs are:

- the time needed to get the required identification, as well as the time and information involved in obtaining an affidavit of indigency at yet another separate location, if the citizen is unable to afford the cost
- the time needed to obtain documents prerequisite to the required identification, such as a birth certificate, which must be obtained at a different office from the state- or federally-issued photo ID
- the cost of the birth certificate
- the cost of transportation to and from each of these locations
- the cost of obtaining information as to where each of these documents can be obtained and where they may be obtained.

Getting the necessary birth certificate, for instance, adds to the costs of voting for an individual who lacks one, relative to an individual who already has a driver's license or passport. Although it is possible to avoid the monetary cost of a photo identification by executing an affidavit of indigency, that is not possible with regard to a birth certificate, nor is it possible with respect to the transportation costs involved in each trip and the ability to leave work without losing pay for the trip to get the birth certificate. Further, executing the affidavit of indigency cannot be done at the polling place, so it, too, requires a separate effort, with the attendant transportation costs, to comply.

Which groups might be burdened by these increased costs and therefore at risk of losing their right to vote? People who might find it difficult to pay the costs of time, transportation, fees, and information include those who are disabled, homeless, persons with limited income, those who do not own cars and who do not have driver's licenses but who are registered to vote, people of color and those who a part of "language minorities," and elderly persons (especially those in retirement facilities).

Research on the impact of the "motor voter" law (see Highton and Wolfinger, 1998) also found that the greatest registration increases produced by the legislation were among students and those who had recently moved, indicating the disproportionate effect of the costs of registration on these groups. It is also problematic that college students and young adults

living away from home rarely have their dorm or college address on their driver's license; therefore their license would not be valid for voting purposes and they would have to provide other proof of residence.

A new study (Pawasarat, 2005) helps to document the extent to which such groups could be affected by the new Indiana photo ID law, in finding that approximately 23 percent of Wisconsin residents 65 years and older do not have a Wisconsin driver's license or photo identification (of whom 70 percent are women). Pawasarat also finds that big-city residents, especially those who are African-American and Latino, are markedly less likely to have driver's licenses than are Caucasian non-big-city residents.

These Groups Have Distinctive Viewpoints on Some Political Questions.

There are some differences in political perspectives between these targeted groups and other voters, though they do not necessarily follow conventional wisdom. It is often assumed that because non-voters are drawn disproportionately from among poor and working class people and members of minority groups, therefore most non-voters must be Democrats, so any legislation that reduces the cost of voter turnout would benefit Democratic candidates.

Systematic empirical research does not confirm this view, however. Citrin et al. (2003: 76), in a study of 91 Senate races in 1994, 1996, and 1998, find that

"there is no constant, linear association between turnout and the Democratic vote." Although non-voters are somewhat more likely to identify as Democrats, this tendency varies across states and across time periods. It is perhaps most accurate to say (as DeNardo, 1980 does) that higher voter turnout brings more "peripheral" voters to the polls – those with weaker party identification – so higher turnout tends to lead to higher rates of defection from the majority party in the area. That is as likely to benefit Republicans On areas where they are in the minority) as it is Democrats. So the partisan implications of turnout vary, depending on the state or locality in question. Overall, however, Citrin et al. find that if all non-voters were to come to the polls on Election Day, in the three years' worth of Senate races they studied, only a very small number of races would have had a different outcome.

With regard to preferences on policy issues, research shows that there are some differences worth noting between those less likely to vote, for whom the costs of voting are felt more heavily, and those who go to the polls regularly (see Highton and Wolfinger, 2001: 179; Gant and Lyons, 1993). According to Bennett and Resnick (1990: 791-793), for example, non-voters are more likely to favor increased provision of government services. They are more strongly in favor of government spending on domestic policy and more positive in their attitudes toward government social programs. This is understandable given the tendency of non-voters to be of lower socio-economic

status than voters are, and to be more likely to be of minority racial groups.

In addition to these differences in views on issues, disadvantaged people and those for whom the costs of voting weigh more heavily tend to have different policy *agendas* than advantaged groups do. In particular, they are less concerned with foreign policy and issues such as abortion and the environment and more concerned with health and human services and other basic human needs (Verba, Schlozman, and Brady, 1995, pp. 220-225).

Is There Some Valid Reason to Make Voting Harder for Some Groups Than for Others?

Although voting is a fundamental right in the United States, various states have at times chosen to deny that right to some residents, presumably because the states' lawmakers felt that the dangers to the polity that would be posed by these residents' voting outweighed the value of universal adult suffrage. Most states, for example, deny the right to vote to convicted felons while they are serving their sentences, and many require that these felons petition to recover their suffrage after they have been released from incarceration.

Do the targeted groups with regard to this legislation have any characteristics that could make them a threat to the state of Indiana if they were to vote? Several political scientists have used survey data to determine, for example, whether disadvantaged

groups and those less likely to vote are more anti-democratic in their attitudes than advantaged groups and other voters are. One of the most thorough of these analyses (Bennett and Resnick, 1990) finds no evidence of this. They report only weak relationships with levels of expressed patriotism and levels of alienation. Disadvantaged groups and infrequent voters are no more likely than other citizens to favor substantial change in government officials (p. 782), to oppose civil liberties (pp. 783-785), or to be hostile to business or to favor government ownership of industry or other sectors of the economy (p. 797).

What Is the Impact on the Political System if Some Groups Face Higher Burdens in Casting a Ballot Than Others?

The democratization of American elections has proceeded gradually but inexorably for more than two centuries (see Williamson, 1960). From the elimination of property or tax-paying requirements to the enfranchisement of black men, women, and those 18 to 21 years old, the American political system has been driven by the principle that universal adult suffrage is a democratic value, and that the denial of suffrage ought to be driven by a good reason why the adult in question does not deserve the right to choose his or her elected representatives. There would appear to be no good reason why the groups for whom voting would become more costly as a result of this legislation – elderly and infirm people, poor people, blacks and other racial and language minorities,

college students, the homeless, and those who do not own cars – ought to be singled out for such treatment.

In summary, when we look at the decision to go to the polls as a balance of costs and benefits to the citizen, voting has been found to impose more immediate and tangible costs than benefits, and even small increases in the cost of voting have been found to drive down turnout. Some types of citizens disproportionately bear the costs of voting, and even slight increases in those costs have particular impact on the participation of those citizens. These include people disadvantaged in education, income, mobility, place of residence, age, and race. There would appear to be no support for the notion that people with these characteristics would be more likely than more advantaged people to threaten the preservation of the political system, and so should be disproportionately burdened by voting prerequisites. And in fact, the burdening of these groups would seem to jeopardize the principle of universal adult suffrage and the need for legitimacy in democratic elections.

A Sampling of Research on Voter Turnout (including Works Cited)

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Table 1. **Voting Rates by State as a Proportion of Citizen Voting-age Population in 2004 Relative to Type of Voter Registration Requirement**

State	***Turnout***	***Prospective Voters Must Register by***
Minnesota	*79.2*	*Election-day registration*
Wisconsin	*76.6*	*Election-day registration*

Oregon	74.0	21 days before
Maine	*73.1*	*Election-day registration*
New Hampshire	*71.5*	*10 days before or on Election Day*
North Dakota	*71.5*	*No registration required*
Iowa	71.3	10 days before
Montana	70.2	30 days before
D.C.	69.2	30 days before
Massachusetts	68.6	20 days before
Missouri	68.5	28 days before
South Dakota	68.3	15 days before
Utah	67.8	20 days before
Alaska	67.6	30 days before
Washington	67.6	30 days before
Colorado	67.5	29 days before
Vermont	67.3	10 days before
Michigan	67.1	30 days before
Wyoming	*66.9*	*29 days before or on Election Day*
Delaware	66.4	20 days before
Ohio	66.1	30 days before
New Jersey	66.0	29 days before
Illinois	65.6	28 days before
Maryland	65.6	21 days before
Nebraska	65.3	11 days before

Kentucky	65.0	29 days before
Pennsylvania	64.5	30 days before
New Mexico	64.4	28 days before
Florida	64.3	29 days before
Kansas	64.2	15 days before
Louisiana	64.2	30 days before
Arizona	63.8	29 days before
*** U.S. average ***	*63.8*	
Rhode Island	63.7	30 days before
Alabama	63.2	11 days before
Connecticut	63.2	14 days before
South Carolina	63.2	30 days before
Virginia	63.1	29 days before
Oklahoma	62.3	25 days before
California	61.9	15 days before
Mississippi	61.7	30 days before
Idaho	*61.6*	*25 days before or on Election Day*
North Carolina	61.4	25 days before
New York	60.2	25 days before
Nevada	58.9	21 days before
Arkansas	58.7	30 days before
Indiana	58.6	30 days before
West Virginia	57.2	20 days before
Texas	57.1	30 days before

Georgia	56.8	30 days before
Tennessee	54.6	30 days before
Hawaii	50.8	30 days before

Sources: For states' voter turnout rates in 2004: U.S. Census Bureau data found on the Internet at http://www.census.gov/population/www/socdemo/voting/cps2004.html Table 4c. Reported Voting and Registration of the Citizen Voting-Age Population, for States: November 2004. For registration deadlines: each state's Secretary of State Web page (compiled by the author).

Table 2. **Voter Turnout in Presidential Elections in Western Industrialized Democracies**

Democracy	***Year***	***Vote as a Proportion of Voting-Age Population***
Iceland	1996	87.0
Israel	1999	84.5
Belarus	2001	81.3
Finland	2000	76.8
France	2002	71.7
Austria	1998	68.6%
United States	***2000***	***49.3***
United States	***2004***	***59.6***

Parliamentary (legislative) elections:

Iceland	1999	86.2
Italy	2001	84.9
Israel	1999	84.4
**Belgium	1999	83.2
**Australia	1998	81.7
Sweden	1998	77.7
Germany	2002	75.3
Spain	2000	73.8
Norway	2001	73.1
New Zealand	2002	72.5
Netherlands	1998	70.1
Finland	1999	65.2
France	1997	59.9
Japan	2000	59.0
Canada	2000	54.6
United States	***2002***	***39.0******
Switzerland	1999	34.9*

* National elections in Switzerland are regarded as secondary to cantonal elections, in which turnout is higher.

** These countries have some form of compulsory voting. Austria and Italy have official sanctions against non-voting but they are not enforced or only weakly enforced.

*** The percentage refers to voting for the top office on the ballot in the midterm election (governor, U.S. senator, or U.S. House member); voting for down-ballot offices tends to drop off further (called "roll-off").

Note: Voter turnout can be calculated in different ways, so an individual nation's turnout figure should be compared with the turnout of other nations calculated in the same manner. Comparisons *between* studies need to specify the method used to calculate turnout.

Source: International Institute for Democracy and Electoral Assistance Global Survey of Presidential Elections; on the Internet at http://www.idea.int/vt/pres.cfm (accessed August 23, 2005).

About the Author:

A curriculum vitae is attached listing all of my publications during the past ten years. I have not been paid for taking part in this case by anyone, nor have I been promised any payment. I have never given expert testimony before in any trial or in any court proceeding anywhere.

/s/ Marjorie Hershey

Sept. 15, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants,	)	
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	)	No. 1:05-CV-00634 SEB-VSS

APPENDIX OF THE STATE OF INDIANA, THE INDIANA SECRETARY OF STATE, AND THE CO-DIRECTORS OF THE INDIANA ELECTION DIVISION

(Filed Dec. 1, 2005)

* * *

[LOGO] **Building Confidence in U.S. Elections**
REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM
SEPTEMBER 2005

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* * *

2.5 VOTER IDENTIFICATION*

A good registration list will ensure that citizens are only registered in one place, but election officials still need to make sure that the person arriving at a polling site is the same one that is named on the registration list. In the old days and in small towns where everyone knows each other, voters did not need to identify themselves. But in the United States, where 40 million people move each year, and in urban areas where some people do not even know the people living in their own apartment building let alone their precinct, some form of identification is needed.

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* [Pictures Omitted In Printing]

There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.[19] The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.

The voter identification requirements introduced by HAVA are modest. HAVA requires only first-time voters who register by mail to show an ID, and they can choose from a number of different types of identification. States are encouraged to allow an expansive list of acceptable IDs, including those without a photograph, such as utility bills or government checks. These requirements were not implemented in a uniform manner and, in some cases, not at all. After HAVA was enacted, efforts grew in the states to strengthen voter identification requirements. While 11 states required voter ID in 2001, 24 states now require voters to present an ID at the polls.[20] In addition, bills to introduce or strengthen voter ID requirements are under consideration in 12 other states.[21]

Our Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting. There are two broad alternatives to this decentralized and unequal approach to identification cards. First, we could recommend eliminating any requirements for an ID because the evidence of multiple voting is thin, and ID requirements, as some have

argued, are "a solution in search of a problem." Alternatively, we could recommend a single national voting identification card. We considered but rejected both alternatives.

We rejected the first option – eliminating any requirements – because we believe that citizens should identify themselves as the correct person on the registration list when they vote. While the Commission is divided on the magnitude of voter fraud – with some believing the problem is widespread and others believing that it is a minor – there is no doubt that it occurs. The problem, however, is not the magnitude of the fraud. In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference. And second, the perception of possible fraud contributes to low confidence in the system. A good ID system could deter, detect, or eliminate several potential avenues of fraud – such as multiple voting or voting by individuals using the identities of others or those who are deceased – and thus it can enhance confidence. We view the other concerns about IDs – that they could disenfranchise eligible voters, have an adverse effect on minorities, or be used to monitor behavior – as serious and legitimate, and our proposal below aims to address each concern.

We rejected the second option of a national voting identification card because of the expense and our judgment that if these cards were only used for each election, voters would forget or lose them.

We therefore propose an alternative path. Instead of creating a new card, the Commission recommends that states use "REAL ID" cards for voting purposes. The REAL ID Act, signed into law in May 2005, requires states to verify each individual's full legal name, date of birth, address, Social Security number, and U.S. citizenship before the individual is issued a driver's license or personal ID card. The REAL ID is a logical vehicle because the National Voter Registration Act established a connection between obtaining a driver's license and registering to vote. The REAL ID card adds two critical elements for voting – proof of citizenship and verification by using the full Social Security number.

The REAL ID Act does not require that the card indicates citizenship, but that would need to be done if the card is to be used for voting purposes. In addition, state bureaus of motor vehicles should automatically send the information to the state's bureau of elections. (With the National Voter Registration Act, state bureaus of motor vehicles ask drivers if they want to register to vote and send the information only if the answer is affirmative.)

Reliance on REAL ID, however, is not enough. Voters who do not drive,[22] including older citizens, should have the opportunity to register to vote and receive a voter ID. Where they will need identification for voting, IDs should be easily available and issued free of charge. States would make their own decision whether to use REAL ID for voting purposes or instead to rely on a template form of voter ID. Each state would

also decide whether to require voters to present an ID at the polls, but our Commission recommends that states use the REAL ID and/or an EAC template for voting, which would be a REAL ID card without reference to a driver's license.

For the next two federal elections, until January 1, 2010, in states that require voters to present ID at the polls, voters who fail to do so should nonetheless be allowed to cast a provisional ballot, and their ballot would count if their signature is verified. After the REAL ID is phased in, i.e., after January 1, 2010, voters without a valid photo ID, meaning a REAL ID or an EAC-template ID, could cast a provisional ballot, but they would have to return personally to the appropriate election office within 48 hours with a valid photo ID for their vote to be counted.

To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains. While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

The introduction of voter ID requirements has raised concerns that they may present a barrier to voting, particularly by traditionally marginalized groups, such as the poor and minorities, some of whom lack a government-issued photo ID. They may also create obstacles

for highly mobile groups of citizens. Part of these concerns are addressed by assuring that government-issued photo identification is available without expense to any citizen and, second, by government efforts to ensure that all voters are provided convenient opportunities to obtain a REAL ID or EAC-template ID card. As explained in Section 4.1, the Commission recommends that states play an affirmative role in reaching out with mobile offices to individuals who do not have a driver's license or other government-issued photo ID to help them register to vote and obtain an ID card.

There are also longstanding concerns voiced by some Americans that national identification cards might be a step toward a police state. On that note, it is worth recalling that most advanced democracies have fraud-proof voting or national ID cards, and their democracies remain strong. Still, these concerns about the privacy and security of the card require additional steps to protect against potential abuse. We propose two approaches. First, new institutional and procedural safeguards should be established to assure people that their privacy, security, and identity will not be compromised by ID cards. The cards should not become instruments for monitoring behavior. Second, certain groups may see the ID cards as an obstacle to voting, so the government needs to take additional measures to register voters and provide ID cards.

The needed measures would consist of legal protections, strict procedures for managing

voter data, and creation of ombudsman institutions. The legal protections would prohibit any commercial use of voter data and impose penalties for abuse. The data-management procedures would include background checks on all officials with access to voter data and requirements to notify individuals who are removed from the voter registration list. The establishment of ombudsman institutions at the state level would assist individuals to redress any cases of abuse. The ombudsman would be charged with assisting voters to overcome bureaucratic mistakes and hurdles and respond to citizen complaints about the misuse of data.

The Commission's recommended approach to voter ID may need to adapt to changes in national policy in the future. Since the attacks of September 11, 2001, concerns about homeland security have led to new policies on personal identification. Under a presidential directive, about 40 million Americans who work for or contract with the federal government are being issued ID cards with biometrics, and the REAL ID card may very well become the principal identification card in the country. Driven by security concerns, our country may already be headed toward a national identity card. In the event that a national identity card is introduced, our Commission recommends that it be used for voting purposes as well.

Recommendations on Voter Identification

2.5.1 To ensure that persons presenting themselves at the polling place are the ones on the registration list, the Commission recommends that states require voters to use the REAL ID card, which was mandated in a law signed by the President in May 2005. The card includes a person's full legal name, date of birth, a signature (captured as a digital image), a photograph, and the person's Social Security number. This card should be modestly adapted for voting purposes to indicate on the front or back whether the individual is a U.S. citizen. States should provide an EAC-template ID with a photo to non-drivers free of charge.,

2.5.2 The right to vote is a vital component of U.S. citizenship, and all states should use their best efforts to obtain proof of citizenship before registering voters.

2.5.3 We recommend that until January 1, 2010, states allow voters without a valid photo ID card (Real or EAC template ID) to vote, using a provisional ballot by signing an affidavit under penalty of perjury. The signature would then be matched with the digital image of the voter signature in the voter registration database and if the match is positive, the provisional ballot should be counted. Such a signature match would in effect be the same procedure used to verify the identity of voters who cast absentee ballots. After January 1, 2010, voters who do not have their valid photo ID could vote, but their ballot would only count if they returned to the appropriate election office within 48 hours with a valid photo ID.

2.5.4 To address concerns about the abuse of ID cards, or the fear that it could be an obstacle to voting, states should establish legal protections to prohibit any commercial use of voter data and ombudsman institutions to respond expeditiously to any citizen complaints about the misuses of data or about mistaken purges of registration lists based on interstate matching or statewide updating.

2.5.5 In the event that Congress mandates a national identification card, it should include information related to voting and be connected to voter registration.

Bogus names jam Indiana's voter list

Invalid, repeat entries damaging credibility.

By Bill Theobald

Indianapolis Star

November 5, 2000

The first general election of the millennium is just two days away, and Indiana's voter rolls are bursting with 4 million names – a record.

But hundreds of thousands of those names, as many as one in five statewide and more in some counties, are bogus. The people behind those names have moved, died or gone to prison.

Tens of thousands are registered in more than one county in Indiana. And sloppy record-keeping makes it appear people have voted twice in the same election, at old addresses and in one case even after death.

The clogged voter registration records mean the heart of our election system, the soul of our democracy, is ailing.

Inaccurate voter lists mean a lot more than that, too – they create the possibility of voter fraud and cost taxpayers thousands of dollars. And poor voter participation looks even worse than it is because of inflated registration figures.

And for all that, the thousands of valid names added to the rolls mean little because the number of people showing up at the polls has barely budged.

Details of the bloated condition of the state's voter lists were uncovered in an examination by *The Indianapolis Star.*

Hoosier officials use terms like "ridiculous," "unbelievable" and "a nightmare" to describe that condition.

There's enough concern that legislation will be offered next year to make it a bit easier to clean up the rolls and to form a committee to study the ultimate solution – a statewide computerized voter database.

This is not just a problem in Indiana. One national expert on voter registration says lists in many states are so inaccurate that the numbers are "virtually unusable."

Invalid names piling up on the state's voter registration rolls primarily are the result of the National Voter Registration Act, commonly called "motor voter" because it allows people to register to vote when they get their driver's licenses, and by mail.

The law was implemented in Indiana five years ago and has made it far easier to register to vote but far more difficult to rid the rolls of invalid names.

"It has become almost ridiculous. I don't know (if) there is fraud, but it invites the possibility of fraud," said state Rep. Mark Kruzan, D-Bloomington, Majority Floor Leader in the Indiana House, who tried unsuccessfully last year to pass legislation to help unravel the lists.

A lot of the problem could have been prevented had Indiana created a statewide computerized database of its voter rolls when the motor voter law went into effect.

But fear blocked the way – fear by Republicans that they would lose the political advantage they had held so firmly in this state and fear of uncertain technology and a loss of local control by county officials.

Now, the same solutions that were discussed when the law took effect are emerging again, though it may take some time to see them through.

Legislative leaders are focused on issues in the coming session that will bring them bigger political payoffs – dividing up the state budget and redrawing political boundaries.

Meanwhile, the voter lists keep growing. Large toll for inaccurate rolls

The lists that show who is registered to vote Tuesday are a quagmire of out-of-date information.

Interviews and a computer-assisted analysis by *The Star* found:

Tens of thousands of people appear on the voter rolls more than once. Thousands of these double registrations exist in central Indiana.

More than 300 dead people on the rolls were discovered, and the real number is probably higher. One of those registered, a South Bend woman, died in April 1998 but was recorded as voting in that fall's general

election. Election officials believe it was a clerical error.

The public has been misled about voter participation. Measured as a percentage of the voting age population, turnout was essentially the same in the 1998 general election as it was in 1994, just before the new law went into effect. But because the voter rolls have swelled so dramatically with incorrect information, it has appeared that voter turnout dropped 10 percentage points during that time.

State and county officials spend hundreds of thousands of dollars dealing with the bulging rolls. County officials have added polling sites, bought voting machines and spent staff time and money wrestling with the lists.

An analysis of the nine-county central Indiana area revealed more than 500 examples that appear to show someone voting in a county where they no longer live. One person admitted to voting in Marion County after having moved to Hamilton County, but said poll workers said it was OK. In the other cases where *The Star* could track down voters, the people had moved from one county to the other and then moved back – without their names being removed from the rolls.

Inaccurate voter records make it appear that four people in central Indiana voted twice in the same election. No one noticed the apparently improper votes because no one in Indiana looks for fraud in a systematic way.

A cursory check found three convicted killers and two convicted child molesters on the voter rolls in central Indiana – even though state law says the names of anyone convicted and sentenced to even one day in jail are supposed to be removed. People may register again when they are released.

Officials don't think widespread, systematic voter fraud is going on in the state. And *The Star* analysis didn't find any.

"The bottom line here is I think we are lucky to live in a state where most people are pretty scrupulous," said Bruce Northern, the state coordinator for implementing the federal registration law. "It's a Midwest thing."

Still, many concede, the potential is there and fervor by misguided citizens easily could turn that potential into a problem.

"When you consider how low the turnout is and how narrow the margins are becoming in more and more races, it only takes a couple of votes to steal an election," said Deborah M. Phillips, president of the Voting Integrity Project, a national group pushing concerns about the motor voter law.

Not just a Hoosier problem

Many states besides Indiana have struggled to keep the voter rolls clean.

That's because the names just keep rolling in. According to a report from the Federal Election Commission,

between 1994 and 1998, nearly 26 million names were added to the voter rolls nationwide – about a 20 percent increase.

Alaska, according to the same report, had 502,968 names on its voter rolls in 1998. That's a mean trick considering the census estimates only 437,000 people of voting age were living in the state that year.

Curtis B. Gans, director of the Committee for the Study of the American Electorate, stated in a report on the 1998 general election that the voter registration numbers from around the country "are virtually unusable" and "more inaccurate than they have ever been."

Several voting fraud scandals have been blamed on the new law.

In California, U.S. Rep. Robert K. Dornan, a Republican, tried unsuccessfully to get his loss in the 1996 election overturned, claiming voter fraud.

The 1997 Miami mayor's race was overturned after investigators discovered widespread absentee ballot fraud.

The motor voter law also has received some attention when people in other states have used the mail-in forms to register fictitious people – or pets – and then obtain absentee ballots in those names. The same loophole, exists in Indiana; other states have tried to close it by requiring people who register by mail to vote in person the first time.

While the law may have had the unintended consequences of making voter lists dirty and spawning fraud, two expected results have not materialized.

According to officials of both parties and academic studies, the law has not boosted the numbers of Democratic voters, as Republicans feared. Nor has it increased voter turnout, as some predicted.

In Indiana, 727,723 more names were on the voter rolls in 1998 than in 1994, but turnout dropped to 37percent of the voting age population, compared to 38 percent in 1994. Nationwide, despite the 26million additional names on the rolls, turnout dropped from a pathetic 39percent of those of voting age in 1994 to an awful 36 percent in 1998.

Despite its problems, the law's noble intent – to open up the voter registration process – is applauded, even by those who were critics at the time or are worried about the side effect of dirty voter lists.

Gans, for example, calls motor voter a "wonderful law."

"It makes registration virtually automatic in this country, and that's a good thing," he said.

Whatever their view, everyone agrees that changes in the motor voter law aren't expected anytime soon.

Said William C. Kimberling, of the Federal Election Commission, "Right now, it's just kind of a dead issue."

Lots of deadwood

In Indiana, one word describes the problem with the motor voter law five years out: deadwood.

Since 1994, more than I million names have been added to Indiana's voter registration lists. That's up one-third in just half a decade.

Estimates from election officials on how many of those names are invalid range from 10 to 20 percent or even higher. Marion County voter registration board members Sherry Beck, a Republican, and Cathline Mullin, a Democrat, estimate up to 35 percent of the names in their county are no good.

The Indiana Election Division's "duplicate voter registration elimination project" this year identified more than 97,000 people in Indiana registered at more than one address.

Using the same methodology as the state, *The Star* looked more closely at the nine-county central Indiana region and found almost 19,000 people registered twice, about one-fifth of the state total.

Another source of deadwood is dead people.

By comparing a statewide list of Indiana voters compiled by the Election Division to a database of people who have died, obtained from the U.S. Social Security Administration, *The Star* identified more than 300 dead people statewide who remain on the registration lists. The number of dead people on the rolls is probably even higher because the Social

Security agency said its database is not comprehensive.

More than half of those dead people identified in the comparison are registered in Lake County, a northwest Indiana industrial area with a reputation for political hi-jinks. None of those names, however, could be shown as having voted posthumously.

Sally La Sota, director of the Board of Elections and registration in Lake County, had no explanation for the large number of dead people still registered in her county.

The name of Ruth Brown of South Bend presents the most worrisome reminder of what can go wrong if voter rolls aren't kept up to date.

Brown was a longtime elementary teacher who was named Teacher of the Year in the South Bend school district in 1980, the year she retired.

She died at an Elkhart care facility on April 15, 1998, at age 83.

But her official voting record in the St. Joseph County clerk's office shows her casting an absentee ballot in the November 1998 election.

St. Joseph County Clerk Linda Scopelitis said the absentee ballot applications and the envelopes in which absentee ballots are placed were thrown away accidentally in that precinct. But John Court, the Democratic member of the county Voter Registration Board, said he discovered a list of people who voted

absentee in that precinct. Brown's address appears, but the name has been typed over.

Brown's name was marked as voting absentee by precinct workers in the poll book, but so was the name of another person listed just below Brown and registered at the same address. Court thinks the poll workers incorrectly marked the other person's vote for Brown.

Indiana's voter rolls also include names of convicted criminals.

One is Collis Sivels, 27, of Indianapolis, who was sentenced to serve 60 years in prison in July 1999. He was convicted of murder in the September 1996 shooting death of a man at a Westside apartment complex.

Voters caught unaware

The Star's analysis and interviews also indicate people may be voting at old residences after they have moved to another county.

Just in the nine central Indiana counties, *The Star* found more than 500 cases where it appeared that someone had moved from one county to another and yet voted in the previous county of residence.

Of those examples where *The Star* was able to track down the voters, most people said they voted in the correct county.

Bradley E. Garloch of Fishers admits he voted at his old address in Marion County in the 1999 general

election but said he tried to vote in the right place and was told he couldn't.

Garloch, 30, lived at a Northeastside apartment complex for several years and voted there.

He moved to a house in Fishers late in the summer of 1999 and registered to vote. Close to Election Day, Garloch said he talked to an election official – he doesn't recall whom – and was told he couldn't vote in Hamilton County. He then went to his old precinct in Indianapolis and said poll workers told him because his name still appeared on his old apartment lease that he could vote.

But the law says clearly that people should vote where they live. For Garloch, that meant Hamilton County.

Based on inquiries they receive, election officials also suspect people are voting at old addresses.

John Williams, election deputy for Shelby County, said he has received calls from former Shelby County residents who say they want to come back to vote.

"I warn them," Williams said, but because they won't give their names, there is no way to check whether they did vote illegally.

Far more disturbing than people voting in the wrong place would be people voting twice in the same election.

Just comparing voter rolls in the nine-county area, *The Star* found four examples of people who, according to

official county records, voted twice in the same election.

But in each case, when county election officials at *The Star's* request went back to the poll books – which people have to sign when they vote – they discovered that votes in that person's name had been recorded incorrectly.

That's what happened to Jackson C. Mahaney of rural Boone County.

The 40-year-old travel-magazine editor is a native of Zionsville and has moved back and forth between Boone and Marion counties.

He ended up registered in both places, and the official records showed him voting in both counties in the 1996 general election.

Mahaney was living in Marion County then, he said, and didn't vote in Boone.

"I know I didn't do that because I was lucky to get in to vote once," he said, referring to his busy schedule.

Fortunately, Boone County officials saved the poll books from that election – even though they legally could have thrown them out two years ago.

Mahaney's name doesn't even appear in those records, according to the clerk there. The culprit: clerical error.

Donald A. Decker was at first a little glib when told he was registered in two counties – Marion and Hancock.

"I don't want Clinton to win, so I gotta do what I can," he said, laughing.

But when he discovered that the official voting records showed him casting a ballot in both counties in the 1998 general election, Decker grew concerned – and was adamant that it didn't happen.

The 59-year-old engineer said he lived with his stepson in Indianapolis when he moved here in 1997. He and his wife moved to New Palestine in June 1998.

Marion County election officials solved the mystery when they discovered that in the poll book someone had written "moved last year" in the signature area next to Decker's name.

That was counted as a vote.

Costly to taxpayers

The clogged rolls have cost taxpayers thousands of dollars in cleanup costs and additional election expenses.

The Indiana Election Division has conducted its statewide duplicate program four times at a total cost of about $900,000.

And several county officials, such as Monroe County Clerk Pat Haley, believe they have increased the

number of voting sites unnecessarily because the lists are so out of whack.

Haley, whose county includes the transient student population of Indiana University at Bloomington, has added about a half dozen precincts since the law went into effect. Each new precinct costs county taxpayers $10,000 for two voting machines and about $500 per election for additional poll workers and supplies.

Statewide, more than 200 precincts have been added since the motor voter law went into effect, according to state election officials.

More precincts – and more cost – could be in the offing.

Kathy Richardson, a state representative who also is the Hamilton County Election Administrator, said she has 13 precincts that already are over the 1,200-registered-voter limit that forces splitting off a new precinct. Marion County officials also report 13 precincts with more than the legal limit and a total of 39 with more than 1,000 voters.

Money also is wasted in Indiana because thousands of people fill out new registration forms even though they are already validly registered at their current address.

In fact, according to a Federal Election Commission report, 121,783 wasted forms were filled out in Indiana in 1997-98, giving the state the highest percentage of unnecessary registrations of any state in the country.

Some election officials even worry that making registration so easy has eroded the importance of the voting process.

"I think we've tossed away that responsibility for numbers that don't mean anything," Haley said.

Mobility causes unreliability

People move around a lot these days.

That is the key reason why it's so difficult to keep voter rolls up-to-date.

According to a U.S. Census report released this summer, 43 million people, or 16 percent of the population, moved from March 1998 to March 1999.

Under the old system, before the motor voter law, people who moved or died or were sent to prison were removed at the request of a party precinct official. That also occurred when they didn't show up to vote for several years.

But now there exists a complex system requiring precise communication and follow-through by state and local officials and individual voters before a name can be purged from the rolls.

Precise communication and follow-through don't always happen, however.

A case in point is the main cleanup program the state runs to find people registered in more than one place.

Here is how it worked – or didn't – this year:

Step 1: The Indiana Election Division hired a contractor to obtain a computer copy of the voter registration lists from each of Indiana's 92 counties.

Problem 1: The data provided by the counties was incomplete and inconsistent Counties use different computer systems, and some county lists lacked dates of birth for some voters, or the address information was incomplete.

Step 2: The contractor compiled the county lists into one master list and looked for exact matches using the first name, last name and date of birth.

Problem 2: No birth dates in some records meant no way to match names. Plus some people don't register in the exact same name each time, and others change their names when they marry.

Step 3: Those who were matched were sent post-cards. More than 200,000 were sent this summer. People were supposed to mark their old address and return the card. The counties then were sent the names of those people to be removed.

Problem 3: Just under one-third of the cards came back from the post office because the address was wrong or the forwarding address had expired. Many people either missed or blew off those that did make it to the right mailbox. Only about a fourth of the people returned their cards this year.

A final twist: Those who didn't return the post-cards have their registration placed on "inactive" status, but it takes at least two more years before they can be removed from the voter lists.

In fact, these people could vote Tuesday at their old address or in both places.

The kicker: If someone does vote at an old address, his or her registration status reverts to active and the name won't be removed from the rolls.

Candy Marendt, the Republican co-director of the Indiana Election Division, and Spencer Valentine, the Democratic co-director, sympathize with county officials but acknowledge frustration with getting the information they need – accurately and on time – to run the state cleanup program.

"It's like herding cats," Valentine said.

Cleanup programs ignored

Two statewide cleanup programs allowed under Indiana law have never been used by the Election Division.

One, checking the state list against the Social Security Administration death list, which *The Star* did, has been considered but never implemented.

The other, a provision in state law that allows the Election Division to mail a notice to every registered voter in the state and then use the responses as a basis for cleaning up the lists, has been rejected because of cost.

It is estimated such a mailing would have a price tag of about $2million – about twice the Election Division's entire annual budget.

One reason dead people have not been removed from the rolls is that the Indiana State Department of Health has been behind in its state-mandated requirement to notify county officials of people who have died in another Indiana county or elsewhere in the country.

Barbara Stultz, state registrar and director of vital statistics for the Health Department, said the state was two to four years behind in its reports to the county election offices when she took over the job in 1994. The office is now about two quarters behind and hopes to be caught up soon, she said.

Several county election officials also said they don't regularly receive lists of convicted criminals sentenced to jail from their county sheriffs' offices.

Beck and Mullin, the two in charge of Marion County's voter registration rolls, said Marion County Sheriff Jack Cottey never has filed the required report of convicted prisoners with their office.

A Sheriffs Department spokesman said the office didn't know about the requirement until notified by *The Star* and hadn't been called by election officials whose office is just across the street from the sheriffs. The sheriff now will begin producing the convicted-prisoner reports, he said.

The voter lists are dirty, too, because county election officials are banned under law from doing any comprehensive cleanup at the county level. Several counties, including the two largest, Marion and Lake, have explored doing countywide mailings to weed out invalid names, but state officials say the law requires any such mailing must be done statewide.

Still, county officials do what they can, and some even skirt the law a bit. Removing a dead voter is supposed to require an official document.

Linda Grass, Hancock County Clerk and co-chairwoman of the state clerks association's legislative committee, said if she or someone she knows well has gone to the funeral home and seen the body:

"We'll take that."

Same solutions, obstacles

Eventually, the same politics that helped get the state into this mess may lead it out.

The solution that's beginning to win acceptance is a statewide computerized database combined with a unique identifying number for each voter – possibly the last four digits of a person's Social Security number.

The statewide computer system is the same idea some Republican leaders opposed because they believed the lists the state GOP uses for campaigning were better than those of their Democrat rivals.

Having a more accurate state-generated list would have surrendered that advantage.

But Democrats have caught up to the Republicans, financially and technologically, and that's one reason officials from both parties stood side by side at a legislative study committee this summer and argued for the system.

County election officials are now more willing to study the idea. But many still have reservations – particularly about state officials messing with their voter registration records.

Those worries prompted the study committee, chaired by Rep. Thomas Kromkowski, D-South Bend, chairman of the House Elections and Apportionment Committee, to pull back from recommending legislation for next year's session to create a statewide computer database of the people registered to vote in Indiana. Instead, Kromkowski will propose that the state form a special summer study committee in 2001 to look at the issue in depth.

His committee did recommend a bill to require people to provide the last four digits of their Social Security numbers when they register to vote. On its own, that would take a while to have much impact.

County officials are content to wait on the statewide computer system.

Said Richardson, the Hamilton County election official who served on the interim legislative committee: "I'd rather delay it for another year than mess it up."

And the coming legislative session is already crowded with issues leaders consider more important. "I think it's a second-tier priority," said Sen. Robert Garton, R-Columbus, President Pro Tempore of the Senate. The first tier, he said, includes redistricting – a purely political battle over which party can win advantage in the drawing of new election boundaries. Lawmakers also will focus on taxes, education, and the state budget, Garton said.

House Speaker John Gregg, D-Sandborn, was dismissive. "You guys are really scraping for a story," he said. "This is about the most boring topic."

Democratic Gov. Frank O'Bannon, expected to win a second term Tuesday, didn't have time to respond to questions about the issue, his spokesman said.

Gans, the national voter registration expert, said there is one thing that will push inaccurate voter rolls to the top of the political agenda: a crisis.

And make no mistake, he said, one is possible.

"It is a potential accident waiting to happen."

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Indiana Voter Identification Requirement: The Impact of List Inflation

Report of Clark H. Bensen[1]
Prepared for litigation
October 2005

Inquiry: I was asked by counsel in this case whether the new requirement for a photographic identification before voting in person would mitigate the potential for in-person polling place fraud in Indiana.

The past decade has seen a burgeoning of the voter registration lists across the nation. In large part this is due to the enactment of the National Voter Registration Act, or the NVRA (also called Motor-Voter), first effective with the 1994 elections. While the

[1] Clark H. Bensen, B.A., J.D., is a consulting data analyst and attorney doing business as Polidata ® Political Data Analysis and a publisher of reference volumes operating as Polidata ® Demographic and Political Guides. Polidata is a demographic and political research firm located outside of Washington, D.C.

laudatory goals of this act, i.e., making it easier to register to vote, have been largely met, there are operational concerns that affect the scarce use of election administration resources. One important result of Motor-Voter has been that it is more difficult to purge the rolls for persons who are no longer voting in the jurisdiction.

In effect, a jurisdiction can not even begin the now long process of determining the continued eligibility of a registered voter until several preliminary steps are taken. First, the voter must have failed to vote in two successive federal elections. Second, the election officials must send a notification to the voter that the registration may be cancelled. Third, the officials must wait for the returns. Fourth, they must administratively process the results from the mailing. Importantly, these administrative steps are undertaken by officials at their discretion. The end result of this is that the voter registration lists contain many names of persons who are no longer eligible to vote in that jurisdiction for a variety of reasons, mostly because they have moved or died.[2]

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[2] Again, a voter must refrain from voting in two succeeding federal elections in order for the removal process to begin. The Secretary of State in Vermont succinctly summarizes the problem: The number of registered voters is "inflated due to statutorily mandated delay in removing names of persons who have moved to another voting district, but who have not notified the clerk [the local election authority in Vermont] in writing of this change. (National Voting Rights Act [sic] of 1993)." PRIMARY

(Continued on following page)

The concern is that this increase in these 'extra' registrations, i.e., the persons on the list who may no longer be eligible to vote, means that the potential for in-person voter fraud is made greater because there are more names from which to choose.[3] Election officials have two basic ways to minimize this type of in-person polling place fraud. First, they could have a voter list without any extra names. Second, they could require some form of identification at the polls so that the impact of the extra names is negated. From my perspective, the first is an illusory goal in all but jurisdictions with a very small number of voters so the second is the only operational option for election officials. They can either require a signature comparison or a form of identification at the polls. A photographic identification seems to provide the easiest and most reliable means by which Election Day workers can successfully validate a person's identity, especially when offered a relatively contemporaneous picture instead of a signature that may be many years old.

Indiana has chosen the latter operational option as a way to minimize the degree to which any extra names could be potentially used for in-person polling place fraud. Citizens already registered to vote have three

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AND GENERAL ELECTIONS, VERMONT, 2004, Montpelier: Secretary of State, 2005; at 1.

[3] Moreover, as many of the extra names are likely from persons who have left the jurisdiction, the odds of them actually voting, and thus uncovering the fraud, are even less.

options available to them for voting: 1) showing valid identification at the polling place; 2) voting a provisional ballot; or 3) voting absentee, an option exercised by 10% of Indiana voters in the 2004 general elections.

Requiring a photographic identification at the polls not only addresses some administrative concerns, it also reassures the electorate and instills confidence in the integrity of the overall election process by reinforcing the view that there will be less opportunity for fraud at the polls.

Voters need to know that their vote will be counted and not negated by the counting of ballots by fraudulent voters. As U. S. Attorney General Alberto R. Gonzales recently stated: "The power to vote is one of the greatest opportunities we share as Americans". It is important to "preserve the value of that vote from those who would corrupt the election process."[4]

The key question presented here is, how much opportunity is there for this kind of in-person polling place fraud in Indiana? To answer this question we need to review the voter list and the degree to which there are 'extra' names that could provide an opportunity for this type of voter fraud.

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[4] From Press Release *"Department of Justice to Hold Ballot Access and Voting Integrity Symposium: Conference to Focus on Election Fraud, Voting Rights"*, August 2, 2005 (#404). www.usdoj.gov.

State Registration Reports: The voter registration lists include names of some persons who are no longer eligible to vote for a variety of reasons: 1) they have moved to, and/or registered in, a new precinct or county or state; 2) they have died; or 3) they have become ineligible for another reason, e.g., become convicted of a felony. To determine the extent to which there are extra names that provide 'list inflation' we need to review some other data. We begin with the official figures as reported by state election authorities.

For the November 2004 general election, the state reported 4,296,602 registered voters in the state of Indiana with 2,512,142 persons actually voting. This represents a turnout rate of 58.5% of the registered voters. Of these 2,512,142, the state reports that 260,550 voted absentee, which is an absentee turnout rate of 10.4% of the overall voter turnout.

For the 2000 general election, the election closest to the April 1, 2000 Census Day, the state reported that there were 4,000,809 registered voters.[5] The census reported that as of April 1, 2000 there were 4,506,089 persons of voting age (18 and over). Thus the percentage of the voting age persons that were registered was 88.8%. By comparison, the average registration

[5] Note that increase in registration from 2000 to 2004 is 295,793, or a 7.4% increase over the four year period in a state that has grown much slower than the national average; slow enough to have lost a seat in the U.S. House in the 2000 apportionment.

rate for Indiana for the 1988 and 1992 election cycles was 72.6% of the voting age population.[6] This relatively high rate of registration raises the question of whether the rate reflects list inflation.

Let us review the situation with respect to some of these registration and turnout factors before the voter retention aspects of the NVRA. I have compiled a database of county-level registration and turnout indicators for the 8 election cycles held from the years 1990 through 2004. This includes two cycles before implementation of the NVRA, 1990 and 1992. This also includes four Presidential on-year and four off-year cycles. Note however, that Indiana has a split ballot in which three statewide officers are elected in the so-called off-years. This tends to dampen the large swing of voter turnout rates experienced in most states.

There are two factors to review initially: the registration rate and the turnout rate, both measured as percentages of the estimated voting age population.[7] These are designated as Registration As a Percentage

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[6] See Voter Registration and Turnout: 1948-1994, Royce Crocker, Washington, DC: Congressional Research Service, 1996. This study compiled these numbers from every state for several decades of information previously unavailable elsewhere.

[7] The Bureau of the Census provides Voting Age Population (VAP) as part of each decennial census. Estimates between each census are more inconsistently released. Estimates here are merely straight-line interpolations between the two census figures and extended out in like-fashion for 2002 and 2004.

of Voting Age (RAPV) and Voter Turnout As a Percentage of the Voting Age (TAPV) in the attached tables and charts. These measure different subsets but are consistently calculated on the basis of the same universe as a denominator, i.e., the Voting Age Population (VAP). While turnout is sometimes measured as a percentage of the Registration (TAPR), we need to use the rates measured on a more consistent basis, i.e., that of the Voting Age, so that we can compare both rates over time.

From the table for the 1990 election, one can see that the rate of registration for all counties was 69.6% of Voting Age while the rate of turnout was an average of 44.2% of Voting Age. The following table includes the rates for the other years.

Table 1. Average Rates of Counties by Year[8]

Year	RAPV	TAPV
1990	69.6	44.2
1992	78.2	59.1
1994	73.7	44.0
1996	84.4	54.9
1998	90.0	43.1
2000	91.3	52.1
2002	90.7	38.6
2004	94.4	56.0

[8] The RAPV is Registration As a Percentage of Voting Age and the TAPV is Voter Turnout As a Percentage of Voting Age.

By averaging the averages from the two cycles of 1990 and 1992, an on-year and an off-year before the implementation of NVRA, the result is an average 73.9% registration rate and an average turnout rate of 51.7%. The corresponding values for the two most recent on-year and off-year elections, 2002 and 2004, result in a registration rate of 92.6% and a turnout rate of 47.3%. While the overall average turnout rate by county has slightly decreased over the past decade by about 10%, the overall rate of registration has dramatically increased by 25%.

What this means is that the degree of list inflation has also increased dramatically. By way of illustration, I have included tables and charts for a few selected counties. For example, Brown County, a county with a small population located just a bit south of Marion County, reported a total registration for 2004 of 13,661. The estimated number of persons of voting age was 11,656 so the registration rate was an impossible 117.2%. The charts for Brown County tell the story over time. As the population rose modestly over the past decade, from 14,161 to 15,549, so did the estimate of voting age persons, from 10,621 to 11,656. Yet, the registration rose steadily from 7,481 to 13,661, an 83% increase. Therefore the gap between the perceived registration rates based upon voting age (RAPV) and the perceived turnout rate based upon registration (TAPR) ran in opposite directions: RAPV increased and TAPR decreased.

Charts 4 and 5 illustrate the problem. As the registration rate (based upon voting age) grew, the corresponding turnout rate (also based upon voting age) decreased and the gap widened. Chart 5 illustrates that the gap between these two rates was 24.6 in 1990 and 20.9 in 1992. The corresponding rates for 2002 and 2004 were 61.3 and 50.0, respectively. Thus, 50% of the voter registration roll in Brown County as of the 2004 general election consisted of names of voters who did not vote in 2004. Some of this is clearly the result of the give and take of voters who go in and out of the electoral process. However, it is fairly clear that many of these voters are on the list due to the non-maintenance of the lists or the inability to purge names due to NVRA. This conclusion can be supported from other perspectives.

Analytical Options: There are several ways to review the voter list to determine how much list inflation has affected the voter list. First, estimates can be made comparing the registration base with self-reported voting behavior. Second, estimates can be made comparing the registration base with the estimated voting age populations for the state and county levels of geography over time. Third, the names of deceased voters, obtainable from a federal list, can be matched against the voter list. Fourth, one can try and match up names of voters in one county with the lists from other counties. Fifth, the same can be done for lists from other states. We will look at each of these in turn but I will summarize each below.

1) Comparison of the voter registration with self-reported voting behavior. One perspective for review of the voter registration base, is to use the self-reported voting behavior as a means to estimate the true character of the voter list. These data are available from the federal Census Bureau biennially.

2) Comparison of the voter registration with the voting age population. The U.S. Bureau of the Census provides voting age population (VAP), at varying levels of geography, as part of the reports from the decennial census. Alas, the availability of estimates between censuses is a bit inconsistent. A related concern here is the degree to which the overall VAP also includes persons who may be of voting age but who are ineligible to vote (notably non-citizens and felons). This may require an additional level of analysis.[9]

3) Deceased voters on the list. The Social Security Administration produces a Death Master File (DMF). This is a file which is continuously updated and made available to interested parties for the

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[9] In reality, the two largest factors, non-citizenship and felon status, are not likely to affect the status in Indiana to a great degree. Indiana's rates for both of these factors are much lower than the nation. Based upon the 2000 census, Indiana's rate of non-citizenship was 1.9% versus 6.6% for the nation. Based upon data from the Bureau of Justice Statistics, the rate of incarceration was 321 versus 460 per 100,000 persons. Combined this is approximately 2.2% of the voting age that is likely to be ineligible. For our purposes these ineligibles can be ignored here.

maintenance of all types of name and address lists. The state used the DMF as part of the Quest project ("2004 Duplicate Voter Registration Elimination Project and Death Master File List" undertaken by their contractor, Quest Information Systems (hereinafter Quest), following the 2002 election.

4) Duplicate voters, county to county. The state of Indiana has also undertaken just such a review following the 2002 elections as part of the Quest Project.

5) Duplicate voters, other states. While it is theoretically possible to undertake such a review, it does require a source of lists for all states. Until such time as the Help America Vote Act (HAVA) lists for all states are available, this is a bit more difficult. No such review has been undertaken for this project.

Analytical Review:

1) Comparison of the voter registration with self-reported voting behavior. The U.S. Bureau of the Census provides some useful information in this regard. The Bureau undertakes a biennial review of the voting and registration behavior in each state as an add-on to its Current Population Survey (CPS) in the month of each federal election for Congress and, therefore, for President. This information is survey data which is based upon field interviews and does suffer from some self-respondent bias. That is, people are sometimes more likely to recall their 'best behavior' and indicate that they were registered, or

did vote, when, in fact, they did not. This bias could be for a number of reasons aside from the self-response aspect. It could also be the result of sampling error, i.e., that those in the survey sample were not a good representation of the entire universe. Nevertheless, the CPS Voting and Registration Survey (VRS), does provide a different perspective on the information provided by the state as part of the official record. Additionally, it allows for some cross-state comparison based upon a relatively standardized environment.

The VRS of the 2004 CPS for the 2004 presidential election reported the following rates for the state of Indiana: 66.8% of VAP reported being registered and 57.3% of VAP reported voting. This compares to the national rates of 65.9% reported being registered and 58.3% reported voting. Thus, Indiana seems to be close to the nation in both rates of registration and voting on this basis.

Based upon the CPS numbers, a 66.8% self-reported registration rate results in 3,031,000 registered voters; a 57.3% self-reported voting rate results in 2,598,000 voters at the polls. Yet, the official numbers are 4,296,602 registered voters and 2,512,142 voters casting ballots. This means the CPS reports far fewer registrants but about the same number of voters. This comparison suggests that the CPS numbers are more likely to reflect reality inasmuch as the estimate for voting is close to the number of ballots counted whereas the estimate for registration is far fewer than the officially reported number taken from

the voter rolls. The CPS thus supports the conclusion that the voter rolls are inflated with the names of ineligible voters.

In fact, when a similar comparison is made for all states that required registration for the 2004 election, Indiana ranks first as having the largest discrepancy between the official registration numbers and the self-reported rate of registration. Based upon these rates, Indiana's estimate of list inflation is 41.4%[10]. This alone could cause concern amongst election administration officials.

2) Comparison of the voter registration with the voting age population in 2000 and over time. Just as we addressed the situation of some counties using the 2004 information (see the Brown County discussion, supra.), another useful comparison can be made for the 2000 election due to the nearness to the April 1, 2000 Census Date. Such a comparison is based upon contemporaneous data. Comparing the official figures for the 2000 general election registration and turnout with the census numbers of voting age persons for 2000 indicates that

[10] This rate is calculated by dividing the difference between the Official Registration Total and the Self-Reported Registration by the Self-Reported Registration Total (and multiplying by 100 to create a percentage value). Viewed from another perspective, 29.5% of the voter list is 'fluff', i.e., names of non-voters (the difference divided by the Official Registration totals).

there are 12 counties in which the number of registered voters was over 100% of the voting age[11].

From the CPS for the 2000 elections it can be seen that the self-reported rate of registration was 68.5% in Indiana[12], again reflecting list inflation. Based upon the official registration figures, every county but one had a registration rate higher than this self-reported estimate. In fact, the average registration rate for all counties, based upon the official numbers, was 91.3% of voting age, which is 33% higher than the statewide self-reported estimate. Again, at least for 2000, there was clearly a large degree of list inflation. No significant changes in the overall population or the overall registration numbers have taken place since 2000 that would be likely to affect the degree of inflation much[13].

It can also be determined that the relationship of extra voters on the rolls, and the fact that Indiana had the highest degree of list inflation for the 2004

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[11] See Appendix table: "Comparison for All Counties, Registration Rate with Turnout Rate, 2000"

[12] As with all of the CPS VRS data, the number used here is the so-called 'point estimate'. As the results are from a survey, there is a degree of error associated with estimate. Nationwide the error is less than 0.5%. For Indiana it is approximately 1.5 to 2.5 percentage points.

[13] Based upon the biennial estimates of the population, the Census Bureau (NST-EST2004-01) reported that the population of Indiana was 6,091,945 as of July 2000 and 6,237,569 as of July 2004. The state reported a total registration for November 2000 of 4,016,440 and for November 2004 of 4,296,602.

election cycle is a relatively recent situation. In fact, before the implementation of the National Voting Registration Act (so-called Motor-Voter) for the 1994 elections, Indiana had a long period of time when its rate of registration and turnout was generally consistent with the nation[14].

In 1988, the rate of registration in Indiana was 69.71% of VAP compared to a national rate of 70.72%. In 1992, the rate of registration in Indiana was 75.56% of VAP compared to a national rate of 72.18%. In 1988, the rate of turnout in Indiana was 75.67% of VAP compared to a national rate of 70.51%. In 1992, the rate of turnout in Indiana was 72.51% compared to a national rate of 75.90%.

In 2004, based upon an estimated voting age population[15] of 4,592,000 and the official registration and turnout numbers, the rate of registration in Indiana was 93.6% and the rate of turnout was 58.5%. This disparity between the pre-NVRA rates and the post-NVRA rates is significant. There can be little doubt that much of this current disparity, and the list inflation, is due to the increased difficulty which election officials must overcome before they can remove a voter from the rolls for inactivity. Yet it is precisely these extra names that provide the opportunity for election

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[14] See Crocker, op cit.

[15] Note that small inconsistencies may appear in estimates of the voting age population as they are often calculated for different time periods and by different methodologies.

fraud. A voter identification requirement will assist in reducing this opportunity by requiring some proof as to identity.

3) Deceased voters on the list. A step that can be undertaken to review list inflation is to find the names of deceased voters on the list. There is a federal database, compiled by the Social Security Administration on a continuous basis that greatly assists such a review. In fact, this is just what the state did as part of the Quest project following the 2002 elections.

Of course, like any analytical approach, there are caveats worth reviewing at the outset. The federal list, the so-called Death Master File, (DMF) provides only limited information to the database engineer. Alas, the last known street address is not one of the elements on the DMF, only the zip code of the last address. Therefore, a matching scheme needs to be undertaken to assign a degree of confidence in the match. Clearly this depends upon several factors, not the least of which is the degree to which the name is a common name and the number of persons who live in the zip code.

The Quest project identified 55,499 registered voters as potentially matching the names of persons on the DMF. It then applied its own review to assign a degree of confidence for each match. For example, if John Q. Smith, Jr. was identified on the DMF as a deceased person living in zip code 46204, there are several elements to compare against the voter list.

There may be several John Smiths on the voter list; all of these would be compared to the DMF record. If there was no match to the middle initial, or to the last four digits of the social security number (SSN), or to the zip code, then there would be little confidence in believing that any of the John Smiths on the voter list were deceased; and a confidence score of 0 would be assigned. However, other elements can be reviewed. For example, if the last four digits of the SSN matched, that would clearly increase the confidence. The highest degree of match would be a match on the middle initial, the last four digits of the SSN, all 9 digits of the SSN, and the zip code; a confidence score of 10 would be assigned to such a match.

Of the over 50,000 potential matches to deceased registered voters, the number with a confidence score of 5 or more was 35,699 (64.3%), or approximately 2/3 of the initial matches. A match could get a confidence score of 5 by matching on the entire SSN or on the middle initial *and* the zip code. At first blush it would seem that as a percentage basis of the entire 4.3 million registered voters, or at 0.8%, this would not be a very large factor. Based upon approximately 5,500 precincts in the state this would only be about 6 deceased voters per precinct. However, this assumes an even distribution. On the other hand, 35,000 across legislative Districts would average 700 for each of the 50 Senate districts and 350 for each of the 100 House districts.

Therefore, the likelihood that there are so many deceased voters on the voter list also supports the conclusion that there is significant list inflation.

4) Duplicate voters who have moved to another county. The state also undertook another review for list problems, namely a review for potential duplicate registrations. This had some of the same technical problems as the match for deceased voters but was not the same. All of the potential voters were identified on a voter list from a county so at the bare minimum the addresses should have been complete. Alas, a complete address does not mean a match can easily be made. From a data perspective street addresses have a tendency to have multiple elements and despite decades of computerized list development, they are still implemented in Indiana by 92 different jurisdictions, countless hundreds of data entry personnel and millions of voters.

Nevertheless, the 2004 Quest project identified 233,519 potential duplicate registrations. When collapsed to a single voter, this represented 115,176 voters who were potentially on the voter lists more than once[16]. The project mailed out post cards to as many of these addresses as possible[17]. Of the 233,150 post cards mailed out, approximately 41% (95,184) were returned as undeliverable.

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[16] There were about 10,000 instances where there were 3 or more addresses assigned to a potential duplicate.

[17] There were 369 not mailed due to address insufficiencies.

It is also my understanding that this information was forwarded to the county election officials for disposition. There were 27,723 registrations cancelled as part of the post card return project.

5) Duplicate voters who have moved to other states. Of course, just as the check for duplicate voters sought to find potential problem amongst other counties, the same type of analysis should be undertaken for those voters who left the state and/or registered in another state[18]. Until the HAVA lists are available nationwide, this is not a manageable task.

Conclusion: The voter lists are now inherently inflated by the voter retention factor wrought by the National Voter Registration Act of 1993. Many states need to do something to minimize the potential for fraud as extra names *have* accumulated over the decade of implementation of the NVRA. Indiana, more than all other states, has an even greater need to move towards reducing the impact of the list inflation. Indiana has chosen a method to effectively reduce the potential for voter fraud another level by requiring a photographic identification each time a name on the locally developed list, inflated or not, is actually offered for polling place voting. This choice

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[18] "Some 46,000 New Yorkers are registered to vote in both the city and Florida, a shocking finding that exposes both states to potential abuses that could alter the outcome of elections, a Daily News investigation shows." From internet search: http://nydailynews.com/front/story/224449p-192807c.html, accessed October 2005.

allows for consistent application throughout the state; it affects that phase of the election process that has a high potential for abuse (90% of voters vote at the polls); it minimizes the workload on all local election officials; and it helps to minimize the potential for in-person polling place fraud that list inflation could allow for the various locally maintained voter lists without this kind of verification safeguard.

[Attachments Omitted In Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,	)	
Plaintiffs,	)	No. 1:05-CV-0634-SEB-VSS
v.	)	
TODD ROKITA, et al.,	)	
Defendants,	)	
WILLIAM CRAWFORD, et al.,	)	
Plaintiffs,	)	
v.	)	
MARION COUNTY ELECTION BOARD,	)	
Defendant,	)	
and	)	
STATE OF INDIANA,	)	
Intervenor.	)	

DECLARATION OF WENDY ORANGE

(Filed Dec. 1, 2005)

Wendy D. Orange, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am Wendy Davis Orange, the Marion County Election Board Administrator.

2. This affidavit is made on my personal knowledge, and I am competent to testify and will testify to the matters stated herein.

3. I am over eighteen years of age.

4. I am a resident of the State of Indiana.

5. From June of 1996 until January of 2001, I served as the Marion County Election Board Administrator. In my capacity as Marion County Election Board Administrator, I was responsible for the administration of elections in Marion County, which included but was not limited to, the preparation of ballots and other documents integral to voting both at the polling place and absentee.

6. From January of 2002 until May of 2004 I served as a Project Manager for Election Systems and Software, Inc. (ESS) with assignments in Florida and Indiana. In my capacity as Project Manager for ESS, I coordinated the implementation of new voting technologies and related procedures.

7. In my capacity as MCEB Administrator and later as Project Manager for ESS in Marion County, I became knowledgeable of the Indiana Election laws and the operational procedures for conducting elections in Marion County, Indiana.

8. Prior to the voter photo identification statute, SEA 483, P.L. No. 109-2005, codified at Indiana Code §§ 3-11-8-25.1 and 3-5-2-40.5, the two security measures for protecting against voter identity fraud at the

polling place were the challenge procedure and signature comparison by the precinct board clerks.

9. The challenge procedure permitted precinct board members and credentialed party challengers the right to challenge a voter's right to vote in that precinct. In my experience, this challenge procedure was not used primarily to verify the voter's identity, but instead was used to verify that a voter met the residency requirements for voting in the precinct.

10. By contrast, the signature comparison by the precinct board clerks was the principal means for verifying the identity of a voter unknown to the board. In Marion County, the precinct board clerks have precinct voter registration lists that contain digital images of each voter's signature on their registration application. Each individual voter who wishes to vote in the precinct polling place must sign the voter registration list next to the digital image of that individual's signature. The precinct board clerk is responsible for comparing the contemporaneous signature with the digital image signature.

11. If the precinct board clerk does not think that the signatures match and that the individual who signed the poll list is attempting to vote in the name of another, the precinct board clerk may challenge the right of that voter to cast a ballot.

12. Because of the limited expertise of the clerks, the time constraints and pressure at the polls, and availability of only one other signature for comparison, it is my opinion that the signature identification

process at the polls is not an effective means for detecting identity fraud. In my experience, I am not aware of a single instance where an individual who wished to vote at a precinct polling place was challenged because of an alleged signature mismatch.

13. The implementation of the new voter photo identification requirement at the polls will significantly enhance the ability of the precinct board clerks and other precinct board members to detect those who falsely identify themselves and will also make the precinct board clerk's identity verification job easier.

14. In Marion County, an individual who desires to vote absentee must sign and submit a written application under oath to the Marion County Election Board.

15. Upon receiving an absentee ballot application, the Marion County Election Board staff verifies that the absentee applicant is registered to vote with the name and address as stated on the application.

16. If an applicant is registered, the staff prepares an absentee ballot and either mails it to the applicant or delivers it to the applicant by means of a Marion County Traveling Absentee Board, which are bipartisan bodies distinct from the Marion County Election Board.

17. After the voter marks the absentee ballot and seals it in the absentee ballot return envelope provided, the voter must sign an affidavit on the outside

of the ballot return envelope attesting to the voter's identity, residency, and personal voting of the ballot inside.

18. The Marion County Election Board receives the mailed absentee ballots and forwards them to the absentee voter's precinct board for counting on election day. Prior to delivering a voter's absentee application and sealed ballot return envelope to the voter's precinct board, the Marion County Absentee Board compares the signature on the voter's application for an absentee ballot with the voter's signature on the affidavit on the absentee ballot return envelope.

19. If the Marion County Absentee Board determines that the signatures match, the Marion County Election Board delivers the voter's absentee application and the voter's sealed absentee ballot return envelope to the proper precinct board for counting.

20. If the signature is questioned by any member of the Marion County Absentee Board, the application and the sealed ballot return envelope are forwarded to the Marion County Election Board for a determination concerning authenticity.

21. In addition to signatures on the voter's absentee application and voter's absentee ballot return envelope, the Marion County Election Board is authorized to use the signature from a voter's registration list and any other independent documents to verify the validity of the voter's signature on the absentee ballot return envelope.

22. If the Marion County Election Board votes unanimously that the signature on the absentee ballot return envelope is valid, the absentee application and the sealed absentee ballot return envelope are forwarded to the proper precinct board to be voted and counted. If the Marion County Election Board votes unanimously that the signature is not valid, the absentee ballot return envelope is marked with a notation regarding the Board's decision to question the genuineness of the voter's signature. The voter's absentee application and sealed absentee ballot return envelope are forwarded to the proper precinct board for the board to compare the signature on the envelope with the digital image from the voter's registration application and to make a final determination regarding the validity of the signature on the sealed ballot return envelope. Finally, if the Marion County Election Board's vote is divided, the ballot return envelope is marked as a disputed ballot and the voter's absentee application and voter's sealed absentee ballot return envelope are forwarded to the proper precinct board where the precinct board makes the final determination regarding the authenticity of the signatures.

23. In my opinion, the signature comparison method used in Marion County provides an effective safeguard against absentee ballot fraud. In fact, in Marion County absentee ballots are routinely rejected due to non-matching signatures.

24. If absentee voters were required to submit photo identification in the absentee ballot return envelope

with their ballots, the secrecy of the ballots would be compromised because election officials could verify the voter's identity only *after* opening the ballot envelope rather than before. Under the current process, no one may open the ballot envelope (which contains the marked ballot) until a final decision has been made concerning the genuineness of the signature on the ballot envelope. When the envelope is unsealed and the ballot is removed, the envelope and ballot are immediately separated. The ballot is cast into the ballot box and the envelope is stored separately so that it can never be traced to the ballot it once contained. If election officials were required to check copies of photo identification submitted in the same envelope with absentee ballots, they would be required to keep at least one document identifying the voter – the photocopy of the photo identification – with the exposed ballot for what may be a lengthy series of examinations by various election officials. This would quite obviously compromise the secrecy of the absentee voter's ballot.

25. The addition of a photo identification requirement would not significantly enhance the absentee voter's identification process because, unlike with voters who vote in person, there is no basis for election officials to make a determination as to the identity of an absentee voter based on a photograph. Neither the Marion County Absentee Board, the Marion County Election Board nor the precinct board would be able to compare the photocopied photo identification with the face of a person standing in

front of them, with another photograph, or with any other point of comparison. Hence, election officials would be unable to determine whether the person in the photograph was the person who submitted the absentee ballot application, voted the absentee ballot, signed the affidavit on the absentee ballot return envelope, and mailed the absentee ballot to the Marion County Election Board.

I declare under penalties for perjury that the foregoing is true and correct. Executed on the 8th day of November, 2005.

/s/ Wendy Davis Orange
Wendy Davis Orange

[LOGO] *Indiana Democratic Party*

RULES OF THE INDIANA DEMOCRATIC PARTY

Revised May 24, 2005

* * *

If the rules of any two interdependent committees conflict, the rules of the committee with the higher jurisdiction in the Party shall prevail.

RULE 6. RULES OF ORDER

Except where inconsistent with these rules or any promulgated under Rule 4, Roberts' Rules of Order shall govern the procedure of all Party committee meetings.

RULE 7. ACCEPTANCE OF RULES

Any person accepting election or appointment in the Party agrees to accept the privileges and penalties provided for by Indiana law and these rules.

III. MEMBERSHIP AND PARTY OFFICE

RULE 8. ELIGIBILITY FOR MEMBERSHIP & PARTY OFFICES

(a) Any legally qualified Indiana voter who supports the purposes of the Party may be a member.

(b) Except where prohibited by law or these rules, any bona fide Party member may participate

fully in Party meetings and be elected to Party office.

(c) A party member may only be a candidate for precinct committeeperson or state convention delegate if:

(1) His or her most recent primary vote was cast in the Democratic primary;

(2) He or she has never voted in a primary and has declared affiliation with the Party; or

(3) The county chair of the county in which the person resides certifies that the person is a Democrat;

(4) A candidate is not disqualified for not having previously voted in a primary election.

(d) A person who has been disqualified under Rule 19 may not serve in the Party in any capacity during the disqualification term.

IV. STATEMENTS OF PRINCIPLE

RULE 9. GENDER EQUALITY

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants,	)	No. 1:05-CV-00634 SEB-VSS
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNT ELECTION BOARD, Defendant. and STATE OF INDIANA, Intervenor.	)	

PLAINTIFF MARION COUNTY DEMOCRATIC PARTY'S RESPONSES TO INTERROGATORIES OF INTERVENOR-DEFENDANT STATE OF INDIANA

Plaintiff, Marion County Democratic Party, pursuant to Fed. R. Civ. P. 33, hereby submits its

responses to the Interrogatories of Intervenor-Defendant State of Indiana.

INTERROGATORIES

INTERROGATORY 1:

Please state the name, address and organizational position of the individual(s) answering these interrogatories on behalf of the Marion County Democratic Central Committee.

ANSWER:

Edward Treacy
Chairman
Marion County Democratic Party
603 E. Washington Street, Suite 100
Indianapolis, IN 46204

INTERROGATORY 2:

Please identify by name and address members of the Marion County Democratic Central Committee.

ANSWER:

Edward Treacy
Chairman
Marion County Democratic Party
603 E. Washington Street, Suite 100
Indianapolis, IN 46204

Billie Breaux
P.O. Box 26310
Indianapolis, IN 46226

Barbara Lawrence
7859 N. Chester Ave.
Indianapolis, IN 46240

Tony Duncan
3539 N. Denny
Indianapolis, IN 46205

INTERROGATORY 3:

Are the registered voters "associated with the Democratic Party" referred to in paragraph No. 2 of Plaintiff's Complaint members of the Marion County Democratic Central Committee?

ANSWER:

Registered voters who are members of the Marion County Democratic Central Committee are "associated with the Democratic Party."

INTERROGATORY 4:

Please identify any by-laws of written policies of the Marion County Democratic Central Committee that set forth the requirements for membership in your organization.

ANSWER:

The Marion County Democratic Central Committee does not currently have written policies or bylaws setting forth the requirements for membership. In Indiana, voters do not register as members of a political party but express their allegiance to a political party by asking for that party's ballot at the primary election, attending party meetings or events, contributing to the party's candidates and casting votes for candidates in the general election, among other things.

INTERROGATORY 5:

Is the Marion County Democratic Central Committee claiming associational standing for its members or those "associated with the Democratic Party" or anyone else? If so, please identify for what injuries Plaintiff claims associational standing.

ANSWER:

The Marion County Democratic Party is claiming associational standing for all registered voters in Marion County who have cast ballots in the past and/or expect to cast ballots in the future in federal, state, and local elections on behalf of candidates associated with the Democratic Party. The Marion County Democratic Party is also claiming associational standing on behalf of all registered voters who have associated themselves with the Democratic Party by participating in party activities, including

officers of state and county central committees and appointed or elected precinct election officials or committeepersons. These registered voters have all associated themselves with the Democratic Party. The Marion County Democratic Party contends that any voter who does not currently possess but who is required to obtain a qualifying state or federally-issued photographic identification that complies with the dictates of SEA 483 in order to vote a regular ballot is injured by the fact that he or she will be required to obtain the qualifying photographic identification in order to cast a regular ballot. Any individual who currently possesses a qualifying state or federally-issued photographic identification card will be injured when that card becomes non-qualifying under SEA 483 because of its expiration or any other reason, where that individual would not have otherwise gone to the effort and expense of obtaining a new photographic identification card but for the requirements of SEA 483. Injury to those individuals will occur in the form of the additional expenses that will be incurred in order to obtain the required photographic identification, which may include for some voters as many as three different trips (in addition to the trip to the polls on election day) to obtain and present a photographic identification at the polls. Injury will also occur to those persons associated with the Democratic Party who are unable to obtain the required form of identification because they lack the necessary transportation or physical ability to visit the Indiana Bureau of Motor Vehicles or other state or federal entity that can issue qualifying

identification cards, or who lack the necessary transportation or physical ability to travel to the office of a county election board or circuit court clerk after an election in order to provide the required photographic identification or to sign an affidavit of indigency or religious objection, assuming those options are available to them. Injury will also occur to those individuals who are unable to obtain the required form of identification as a result of BMV rules, policies, regulations, or laws that require the presentation of certain forms of identification in order to obtain a driver's license or photographic identification card. Injury will also occur to those individuals who are denied the right to vote a regular ballot because of their lack of a qualifying photographic identification where the regular ballots are counted of other voters who do not possess and are not required to present such qualifying photographic identification, specifically voters casting an absentee ballot by mail and voters residing in and voting at polling places located in certain state licensed care facilities as permitted by SEA 483. Injury will occur to those registered voters who are denied the right to cast a regular ballot as a result of selective, arbitrary, or differential application and enforcement of SEA 483 between various precinct election boards, county election boards, county clerks, and other election officials. These injuries are made more severe by the fact that the BMV has closed or is in the process of closing numerous license branches in the State of Indiana.

INTERROGATORY 6:

What records, if any, are kept by the Marion County Democratic Central Committee that identify:

v. The financial status of those "associated with the Democratic Party."

vi. Those "associated with the Democratic Party" who possess driver's license.

vii. Those "associated with the Democratic Party" who possess photo ID.

viii. Aggregate voting records of those "associated with the Democratic Party."

ANSWER:

Objection. This interrogatory requests information that is not relevant nor is it likely to lead to the discovery of admissible evidence. Furthermore, the request is unclear regarding what information is sought regarding the "financial status of those associated with the Democratic Party" and the "Aggregate voting records of those associated with the Democratic Party." Without waiving those objections, the Marion County Democratic Party states that it conducted a mail survey of precinct poll workers in Marion County for the purpose of determining whether they had qualifying photographic identification and at least 8 individuals indicated they did not have such identification.

INTERROGATORY 7:

Please identify the particular process Plaintiff used to identify those "associated with the Democratic Party" who would be injured by the implementation of the statute at issue.

ANSWER:

The Marion County Democratic Party conducted a mail survey of precinct poll workers for the purpose of determining whether they had qualifying photographic identification. Any registered voter in Marion County who has voted for Democratic candidates in the past and/or who intends to do so in the future, and who does not currently possess a qualifying photographic identification, will be injured.

INTERROGATORY 8:

Please identify by name and address those "associated with the Democratic Party" that the Marion County Democratic Central Committee was able to determine would be injured by the implementation of the statute at issue.

ANSWER:

To date, the Marion County Democratic Party has identified the following persons who would be injured by implementation of the statute at issue:

1. David Harrison
   5045 W. 52nd Street, Apt. 304
   Indianapolis, IN 46254

2. Constance Andrews
   3946 N. Capitol Ave.
   Indianapolis, IN

3. Barbara J. Smith
   3518 Dr. Martin Luther King Jr. St.
   Indianapolis, IN
   (317) 925-1569

4. Imogene M. Chapman
   2826 S. Pennsylvania St., Apt. B-18
   Indianapolis, IN 46225
   (317) 787-6582

5. Ernest L. Pruden
   901 Ft. Wayne Ave., #616
   Indianapolis, IN
   (317) 226-9141

6. Helen L. Wright
   1163 N. Holmes Ave.
   Indianapolis, IN
   (317) 636-8477

7. Lois E. Holland
   1147 S. Bradley Ave.
   Indianapolis, IN 46203
   (317) 357-3073

8. Ronald Yancey
   420 N. Alton
   Indianapolis, IN

9. Bettie L. Weiss
   3060 Valley Farms Rd., #246
   Indianapolis, IN

INTERROGATORY 9:

Is the Marion County Democratic Central Committee claiming a direct injury to itself? If so, please state that injury with specificity.

ANSWER:

Yes. The Marion County Democratic Party will be harmed to the extent that candidates associated with the party receive fewer votes, and potentially lose elections, as a result of voters associated with the Democratic Party being disenfranchised by application and enforcement of SEA 483 or as a result of the deterrent effect that the substantial burdens imposed by SEA 483 may have on whether registered voters associated with the Democratic Party attempt to cast a ballot. The Democratic Party will also be harmed by the exclusion from the Democratic Party primary of those voters who would vote a regular ballot that would be counted but for application and enforcement of SEA 483. The Democratic Party has the right to associate with individuals who declare themselves Democrats by choosing to vote in the Democratic primary, and excluding individuals without valid photographic identification from the primary election injures the Democratic Party by depriving it of its associational rights.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant.
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of DAVID HARRISON, a witness produced and sworn before me, Brandy L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the Office of the Attorney General, 302 West Washington Street, Indiana Government Center South, 5th Floor, Indianapolis, Indiana on the

18th day of November, 2005, at the hour of 11:58 a.m., pursuant to the applicable rules of procedure with written notice as to time and place thereof.

* * *

[6] questions. Mr. Osborn gets a chance to ask questions. Mr. Groth and Mr. Macey can ask questions.

Occasionally, we've had a few objections where someone says I think that question is unfair or not relevant to this lawsuit. What we've done so far is put it on the record and let the witness decide for themselves whether they want to answer or not.

Do you know Mr. Groth?

A. Yes, sir.

Q. And how long have you known Mr. Groth?

A. Oh, a few months.

Q. Okay. And how is it that you know him?

A. Well, I was introduced to him by a sponsor of mine, Ms. Horseman, Attorney Horseman, and she was at that point having me get a voter's registration card and through that discussion and so forth is when I became better acquainted with the Chairman of the Indiana Democratic Group.

Q. And do you know Mr. Macey?

A. No, but if he's a Democrat, I should know him.

I'm a Democrat.

Q. Do you know all the Democrats?

[7] A. No, but I should.

Q. Why is that?

A. Because I'm a Democrat.

Q. Okay. The Ms. Horseman you referred to, is that the former City County Councilman?

A. I think it is.

Q. And she was going to help you do what, get a voter registration card?

A. Yes, sir.

Q. Did she get you registered to vote?

A. Yes.

Q. You are registered?

A. Yes.

Q. Have you voted yet?

A. No.

Q. Will this be the first time you voted?

A. In a number of years, yes.

Q. Like how many years?

A. I'm not sure, but I'm 75 years old, so it's quite a number of years.

* * *

[11] Q. If there would ever be a time that you wanted to leave the Democratic party, hypothetical, and you say, hey, I want to leave the Democratic party, how does one leave the party?

A. He doesn't. Once a Democrat, always a Democrat. I don't believe in switching.

Q. Okay. And so in a general election then, you would vote for the party as opposed to the man or woman?

A. Yeah, the party.

* * *

[13] Q. Okay. Now, since you're over 65, you can also vote absentee just by filling out a piece of paper and saying who you are and you will not be required to have a photo ID to vote absentee.

A. I don't trust that system.

Q. You don't trust that system?

A. No.

Q. Okay. But do you understand that is the case?

A. Because a lot of soldiers vote like that and their votes wasn't counted in the last election according to what I read, absentee.

[14] Q. That might be reason for you to think about switching parties, but that's a whole 'nother discussion.

A. Okay.

Q. You will have a choice to either get a photo ID from probably – the most common is from the Bureau of Motor Vehicles or to vote absentee. Which of those do you think that you would choose?

A. I don't think I should have to pay for a state ID.

Q. If the ID is free, would that make a difference?

A. Yes.

Q. Okay. Now, it is free. The law made it free, but one of the problems that we've ran into is to get a state ID, you need a birth certificate.

A. They don't pay for it?

Q. Do you have a birth certificate, first of all?

A. Oh, yeah, I was born somewhere.

Q. No, no, no, I didn't mean it that way. Do you have one in your possession now?

A. No, sir.

Q. Do you know where you were born?

[15] A. Yes, sir.

Q. Where?

A. Indianapolis, Indiana.

Q. Okay. So you could get a birth certificate here locally from the State Department of Health?

A. If I pay for it.

Q. Yes, the cost is $10.

A. I don't have $10 to pay for that, but I'm proof that I'm here.

Q. Pardon?

A. I'm proof that I was born and I'm here. Why do I need a birth certificate?

Q. I think that there are a lot of reasons. I guess one of the things is that in this day and age, a lot of security reasons are attached to people establishing their identities. I think we're all familiar with that. In 2007, the federal government is going to make you get a federal ID so that will kind of wipe this all out or I don't know about wipe it out, but certainly Indiana is more or less on the forefront as opposed to the tail end as we are on other things.

If you do not have the $10, – are you [16] saying you do not have the $10 to get an ID or to get the birth certificate?

A. Well, basically, no, I don't have that kind of money just to get a piece of paper that says I was born on March the 5th of 1930.

Q. Well, is it that you don't want to spend your money on that or is it that you don't have it?

A. Both.

Q. Have you been to Catholic Charities?

A. Catholic Charities?

Q. The Catholic Center.

A. Oh, I wouldn't go there.

Q. Why not?

A. Right now I'm a Methodist.

Q. Okay. Well, they help Methodists, too, and I just would say to you that they do –

A. Who, the Catholics?

Q. Yes. They are willing to help people. They have a program for the $10 that they will, if you have your birth certificate, they will help you pay that.

A. I didn't know that. But I probably can get it from the Methodists, too.

Q. I'm not sure about the Methodists.

A. Well, I am.

[17] Q. Okay. You think they would help you out?

A. Yes.

Q. So there would be ways to get the $10?

A. Yes.

MR. WEBBER: I have no further questions.

MR. OSBORN: I don't have any questions, Mr. Harrison. Thank you.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant,
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of CONSTANCE ANDREWS, a witness produced and sworn before me, Brandy L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the Office of the Attorney General, 302 West Washington Street, Indiana Government Center South, 5th Floor, Indianapolis, Indiana on the 18th day of November, 2005, at the

hour of 10:08 a.m., pursuant to the applicable rules of procedure with written notice as to time and place thereof.

* * *

[7] A. I work for the Bureau of Motor Vehicles.

Q. What do you do for them?

A. Issue licenses and photo IDs and things related to the BMV.

[8] Q. What particular branch do you work at?

A. I work at the Midtown Branch.

Q. Do you get involved in the process of making state identification photos?

A. Yes.

Q. And what's your role in that procedure?

A. I take customers' information and the documents that's necessary in order to obtain a first time driver's license or first time ID, Indiana Identification Card, and the documents that's necessary to get them are quite strenuous.

* * *

[15] Q. Basically, the question that was asked, and he's going to renew his objection, so listen to the question. Have you ever – let's put it that way. Have you ever split your ticket?

A. Yes.

Q. When you voted for a candidate outside of the Democrat party, did you consider yourself no longer a Democrat?

A. No.

Q. Do you give money to Democratic party?

A. Yes.

Q. Do you give money to Democrat candidates?

A. No.

Q. Do you attend Democrat functions?

A. Yes.

MR. GROTH: I'm going to object just to be consistent. It's my position that that's your business and none of the State's business, but [16] if you want to answer, – you've already answered it, so –

Q. What is the reason that you tend to vote more Democrat candidates?

MR. GROTH: I object. It gets into the witness' political ideology protected by the First Amendment. You don't have to answer the question if you don't want, why you're a Democrat, but you can if you wish.

Q. And, again, I'm just asking like are there issues that the Democrats – you feel more comfortable with? That's the general question. I'm not trying to dig too deeply here.

MR. GROTH: And you don't have to answer that, but it's up to you.

A. I'm not answering.

Q. Okay. Did you say you do not want to answer?

A. I do not want to answer.

Q. Okay. Do you consider yourself to be a member of the Democrat party?

A. Yes.

Q. How would you quit being a member?

A. I guess when I die.

Q. How would someone who decided they wanted to quit other than yourself who probably is not [17] ever going to make that decision get out or quit the Democrat party?

A. How would they?

Q. Yes.

A. Go to another party and sign up.

Q. And when you say sign up, what do you mean?

A. Get registered under a different party.

Q. Okay. But you know – and this is not a trick question – you don't register under one party or the other in Indiana?

A. Well, I mean to vote I guess on election day in the primary. That would be one way.

Q. That would be one way. Can you think of any other ways?

A. If you get on the mailing list with the party of your choice, they would – I suppose the party would assume you are now joining forces with them.

Q. Thank you. Do you currently have a driver's license?

A. Yes, I do.

Q. Do you recall when you filled this out, which would have been I think in the last six months, answering the question, "Do you own a driver's license?" marking, "No"?

[18] A. I may have made a mistake there.

Q. Okay. So you did have a driver's license?

A. Correct.

Q. And how old are you, Mrs. Andrews?

A. Fifty-two.

Q. Do you intend to vote this primary in May?

A. Yes.

Q. And where will you vote at?

A. I will vote in 2012.

Q. And where is that? Where is the polling place there?

A. It's at 46th and Pennsylvania.

Q. Do you plan on working at that polling place?

A. Not at that one.

Q. So will you vote absentee then?

A. More than likely, yes.

Q. And have you voted absentee other times in your life?

A. Yes.

Q. Okay. But if you didn't work, you do have a photo ID so you would be able to go to your poll and vote; is that correct?

A. Well, I was thinking about getting more identification since this new rule is coming up.

[19] Q. But you do have a driver's license with your identification?

A. I have a driver's license, but if I were to lose it, I'd have to obtain something in order to vote.

Q. But currently you do have a driver's license with ID?

A. Correct, yes.

* * *

[28] Q. And have you kept any records or do you have an estimate as to how many customers you have serviced who have approached you and requested a photo identification or a replacement driver's license?

A. Are you speaking of daily?

Q. Well, yeah. How often do you typically have on a given day?

A. Ten to more.

Q. So we might be talking about 50 or more a week?

A. Yes.

Q. And let's just talk about weekly for the time being. If we assume 50, about how many of those 50 who come to your window for the first time, how many of those have all of the documents that they need to get the photo ID?

A. Well, word of mouth is spreading so people seem to be more conscious of trying to come up with everything that they need because they come in saying, "I've heard you all need my life history," so to speak, and so they try to come prepared and even with that comment that they make, they still fall short of the list that they must adhere to.

Q. And do you have any estimate as to how many a [29] week you turn away for lack of proper documentation?

A. Out of 50, 30.

Q. And of that 30, how many make repeat trips and eventually receive the identification that they're seeking?

A. All of them because apparently it's very necessary for them to have it.

Q. Right. But are there some that you turn away for lack of proper documentation that you have not seen again?

A. Yes. Maybe they went to a different branch after they have gotten everything they needed.

Q. So you don't know what happened then?

A. Right.

Q. So at least half of the people who come to your agency seeking a photo ID do not have all the documents that they need?

A. Yes.

Q. And, therefore, they are not issued photo identification?

A. Yes.

Q. Have you ever had anybody come into your office who did not have a traditional residence, they were either homeless or they

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant,
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of BARBARA J. SMITH, a witness produced and sworn before me, Brandy L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the Springfield Health Care Center, 6130 Michigan Road, Indianapolis, Indiana on the 18th day of November, 2005, at the hour of 4:06 p.m., pursuant to the applicable rules of

procedure with written notice as to time and place thereof.

* * *

[8] Q. So when you work in Mount Olive, do you vote absentee then?

A. Yes.

Q. Okay. You have to vote absentee beforehand. Okay. The next question was: Do you have a driver's license?

A. No.

Q. And the answer was no?

A. Right.

Q. And you still don't?

A. No. I don't drive.

* * *

[10] Q. I understand that. But under the new law, I think Mr. Macey would agree with that is that it has to have an expiration date, okay, and he'll talk to you about that. So you mentioned that you had worked for the Democrat ward chair over there, Shively, for some period of time or, you know, quite a few years. Do you normally vote a straight Democrat ticket or do you split and vote for other candidates?

A. That's my business. I'm sorry.

Q. Okay. That's all right. As a matter of fact, earlier in the day, to be frank with you, Mr. [11] Groth objected and he said same thing, that you got a privacy right and my response to that, to him and to you, is I'm not asking someone who they're voting for, but just as a general rule. And the reason I'm asking that, Barbara, is they've identified you as a member of the Democratic party –

A. Uh-huh.

Q. – and I'm trying to figure out exactly what that means, so I'm going to ask you some questions about that. I respect your answer. I'm just asking you some other questions and you can say the same if you want. Do you give money to the Democrat party?

A. Sometimes.

Q. Okay. Do you give money to any Democrat candidates?

A. No.

Q. Do you attend any Democrat meetings or events?

A. Some.

Q. Okay. Is there any particular issue that makes you want to support the Democrat party?

A. Yes.

Q. And can you tell me what that is or the things that you find that are attractive about that [12] party?

A. Well, I believe they are fair. When they're in office, they create jobs and try to help the poor people get off the welfare role and I've been a Democrat you might as well say all my life.

Q. Okay. And if there was a candidate, okay, – let's say there was an election for an office, it could be any office, don't even have to say which one it is. If a candidate from a different party, not the Democrat party, you thought was going to help the poor people more, create more jobs, would it still be your inclination to vote for the Democrat or would you be willing to vote for some other candidate?

A. I'd vote for the Democrats.

Q. You would?

A. Uh-huh.

Q. Straight down the line?

A. Uh-huh.

Q. The question that I've asked before and I'll ask you is: Do you consider yourself to be a member of the Democrat party?

A. Yes.

[13] Q. When you're a member of an organization, usually you have the free will hopefully to stop

being a member. How do you stop being a member of the Democrat party?

A. You just stop.

Q. Okay.

A. They don't tie your hands and say you're in it for life. It's your choice as to whether you want to be a Democrat, Republican, independent, liberal or whatever and my choice was to be a Democrat.

Q. And you've been a Democrat I think you said for a long time; isn't that right?

A. Correct.

Q. But even according to your answer just now is you have the – if you so chose, you could change or you could leave the Democrats at any time, right?

A. Right.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant,
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of IMOGENE M. CHAPMAN, a witness produced and sworn before me, Brandy L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the home of Imogene M. Chapman, 2826 South Pennsylvania Street, Apartment B-18, Indianapolis, Indiana on the 18th day of November, 2005, at the hour of 2:00 p.m.,

pursuant to the applicable rules of procedure with written notice as to time and place thereof.

* * *

[12] A. I think it was on there.

Q. Yeah, which starts to eliminate the need to have in the old poll book.

A. The thing about the old book is they got so many people on there dead and gone and haven't been around for 100 years and they're still on the book, which to me soaks up your – and you don't have them. You don't have them in either party because, you know, they're both parties naturally. And I knew who they were in both most of them, especially the ones that were around for a long time. I never could understand that.

Q. The difficulty in getting rid of them? You can't understand the difficulty in taking off the deceased and –

A. Yeah, because I even told them where they were. Some of them I did know. A lot of them were in here, I mean these buildings at one time. It used to be a different place around here than it is now. I liked it better then.

Q. How big a precinct is that? I mean about how many voters –

A. I forgot how many they had on there, but you take off about 75 in both parties total and [13] it's not as big. I forgot what it was, I really have.

Q. But under the law today, you know it's very difficult to take them off?

A. I think that's crazy, for 20 years they're dead. You can't vote if you're – can you? Well, maybe you can. Gee whiz, I answered the wrong thing.

Q. Now, did you work as a Democratic clerk primarily?

A. Uh-huh, but I help both of them.

Q. Yes, I understand.

A. Some of them don't, but I did.

Q. I've worked in many polls.

A. Some I really liked and some I didn't. Just like you don't like Cadillac everybody, something wrong with you.

Q. You yourself personally, do you split your vote?

A. I do when I can. I think that's – that's why I never did like primaries because you can't do scratching. Sometimes you like to scratch. Sometimes it's somebody you know or know of or so on and so forth.

Q. Do you consider yourself to be a member of the [14] Democrat party?

A. I'm a Democrat, but not radical. I know some in both parties that are radicals.

Q. Yes, I do, too.

A. I can't see it. I mean, you know.

Q. So in those elections, though, that you pick out and vote for a Republican candidate, let's say, as opposed to a Democrat, that doesn't make you say you're a Republican?

A. Oh, no. No.

Q. So for the most part, by and large, you're with the Democratic party?

A. By and large, I'm a Democrat. A lot of my family were Republicans. Still are.

Q. You seem like you came from a good stock. Do you give money to the Democrat party?

A. I don't have much to give, no. I would if I could, but I'm on limited income.

Q. Okay. Do you give money to Democratic candidates? Same answer?

A. No.

Q. Okay. No. Are you active in the Democratic party, attending meetings or events?

A. Occasionally, Rosemary – you know Rosemary Vandover (phonetic)?

[15] Q. No.

A. Well, she's a –

Q. Precinct committeeman?

A. Precinct committee and something else and sometimes I've gone with her to a few things.

Q. Okay. Is there any particular issue why you associate yourself with the Democrat party as opposed to the other parties?

A. Yeah, I grew up in the depression and FDR was the savior of everybody and basically – of course, I worked in department stores and basically – of course, they pay a lot more money than they did when I was in the work force.

Q. Yes.

A. Considerably more. And in some areas they don't, but I mean – and I always did a little better seemingly under the Democrats than I did under the Republicans. I don't know whether that was just fate or just that's the way it went along. Who knows.

Q. So it started off when you were young –

A. Oh, yeah.

Q. – as a – you saw that FDR and –

A. I was eight years old October 29th, 1929. [16] That's when it all fell to pieces.

Q. And he put people to work, FDR put people to work?

A. Yeah, it took a while, but people weren't mean like they are today. They didn't go around killing people and –

Q. I understand.

A. Best thing we had was John Dillinger.

Q. You mean worse thing we had.

A. And I knew people that were related to him and I guess he came from a wonderful family.

Q. Is that right?

A. Well, that happens.

Q. Yeah. Is it fair to say then that you think the Democratic party is more aligned with your economic interests?

A. Yes.

Q. If –

A. If I had a lot of money, I'll tell you exactly what I'd do.

Q. Okay.

A. I'd change it.

Q. But if there was a candidate in another party, be it GOP, Libertarian now, green party or whatever they have and you thought he or she [17] was more aligned with your economic interests, would you vote for them?

A. Yeah. You can't in the primary, but you can in the election.

Q. Well, why can't you in the primary?

A. Because you can't – you have to declare your politics, declare your politics, and you can't scratch and you couldn't even on the machines either. They were locked. They were locked for your party.

Q. You do understand, though, that in a primary in Indiana you can vote for either party?

A. I never heard of that before.

Q. No, I'm sorry, I didn't say that right. When you walk into the polls, even though you voted Democrat for the last four times, you can say I would like to vote Republican?

A. Yeah, you can do that. I've heard people do it.

Q. Okay.

A. Vice versa.

Q. Yes.

A. But I knew and I thought, "Wait a minute. What are they doing?"

Q. And they call that the crossover vote and some

* * *

[22] before we started you have arthritis –

A. Yes.

Q. – and vision problems also? Okay.

A. I've never been able to see too good.

Q. If you did get to the BMV, do you have the documents necessary to get an ID?

A. What do you have to have?

Q. Do you have a birth certificate?

A. I've got a copy. It's threadbare, but I've got a copy here.

Q. So I will say to you that that's the big hang up. This is not really a question, but make sure you call down there and go through the things that they need because that's one of the issues in the lawsuit. The big one that most people don't have is their birth certificate.

A. I've got my Social Security card, my Medicare card, my picture on my bus thing and a copy of my birth certificate.

Q. The last thing is I think you need something to show your residence.

A. Oh, and my voter registration.

Q. Okay.

A. That 2826 South Pennsylvania Street just drives me insane.

[23] Q. Okay. That shows where you live, though?

A. From 1991 I had the address of 2859, which this is. Well, they weren't going to do nothing about it. So I called the post office and the old guy told me if

I wanted to get my mail, better – actually, by law, they can't take it away from you. They said there wasn't anything out here. I said by law, that's a firewall, you can't move it and it is.

Q. Okay.

A. Then I got them to put a sign out in the back. The guy said you better put it back there so people can find it.

MR. WEBBER: Ms., you're delightful. I have no further questions for you. Mr. Macey may want to ask you some questions.

MR. MACEY: I have a few.

THE WITNESS: Okay.

CROSS EXAMINATION

QUESTIONS BY MR. MACEY:

Q. Would you take out your birth certificate? Because the question I have is: Is it a certified copy of a birth certificate or is it [24] just –

A. My one is – you can see how threadbare the copy – I mean copied from my birth certificate. Its old and it's got a stamp down there.

Q. This looks like it's a photocopy.

A. This is. This is.

Q. This is a photocopy?

A. Yeah, because my birth certificate, I said, you know, it's all – you can see it's about to come in two. I've got it.

Q. But you do have a birth certificate?

A. I do have. That's what this is copied from, oh, yeah. They told me I better copy it because – Social Security told me that when I was down at Social Security a long time back they said because it's going to fall apart. I said, yeah, I know.

Q. I see.

A. No, that's legit.

Q. Right. I'm not questioning that. The issue, though, is whether it would be accepted.

A. You mean, in other words, if I go to that place, I better dig the other one out anyway?

Q. Yeah. And even then, I'm not sure whether – [25] I'm not sure exactly.

A. Here is that – well, you can't see it on there.

Q. There is a seal on the original?

A. Oh, yeah, there's a seal. See, you can see it vaguely there.

Q. Okay. All right. And you do have that in your possession?

A. Yeah, it's locked up.

Q. So you were – this is from Logansport?

A. Uh-huh, I had to write there and you know what that cost me over 60 years ago? Fifty cents.

Q. Okay. But you wrote away and got it?

A. Yes, I did. They didn't give them to you. You know, a lot of times years ago they didn't give them to you. Some of them never even registered them in the State House or – yeah, State House I guess is where you registered.

Q. So if you needed to get a new one, you would have to do it by getting in touch with Cass County?

A. I'd have to get – oh, yeah. I was born. Deer Creek Township, which I didn't know. I don't know one township from another, just like everything else.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant,
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of ERNEST L. PRUDEN, a witness produced and sworn before me, Brandy L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the Office of the Attorney General, 302 West Washington Street, Indiana Government Center South, 5th Floor, Indianapolis, Indiana on the 18th day of November, 2005,

at the hour of 11:14 a.m., pursuant to the applicable rules of procedure with written notice as to time and place thereof.

* * *

[7] Q. And are you still 73 years old?

A. No, today is my birthday?

Q. Oh, happy birthday. So you're 74 now?

[8] A. Yes.

Q. Do you work on precinct boards, election boards at the local polls?

A. Yes.

Q. Often?

A. Well, not often. Since they started – I mean since they –

Q. Often is the wrong word. For a long time I guess I should have said.

A. Not for a long time, no.

Q. So how many elections have you worked?

A. One, actually.

Q. Oh, just the last one?

A. Yes. I think it was the last, yes.

Q. What job did you have for that?

A. I registered the voters. I registered them when they come in to vote, they have to sign.

Q. Oh, you were the clerk?

A. Yes.

Q. Okay. And there is a Republican clerk and a Democrat clerk. Which were you?

A. Democrat.

Q. And where was the polling place?

A. Where I live, 901 Fort Wayne, the Lugar Tower.

Q. Okay. You live in Lugar Tower and there's a [9] polling place right there?

A. Yes.

Q. In your own voting habits, do you ever split your ticket or do you vote straight party ticket?

A. Generally straight.

Q. Have you had occasion to ever vote for a candidate outside the Democrat party?

A. I've thought about it, but I haven't.

Q. Pardon me? You've thought about it, but you –

A. I've thought about it, yeah.

Q. But you've never pulled the trigger on that?

A. No.

Q. Do you give money to the Democratic party?

A. Probably.

Q. Do you give money to any Democrat candidates?

A. No.

Q. Is there a particular issue that makes you want to identify with the Democrats?

A. I was sort of born into it, so I don't remember making a conscious decision to become a Democrat. That's what my family was probably.

Q. And what if you didn't want to be a Democrat anymore, how would you stop being a Democrat?

[10] A. That's a good question. How would I stop?

Q. Yes.

A. That's a good question. I hadn't really thought about that.

Q. Do you consider yourself to be a member of the Democratic party?

A. Yes.

Q. Okay. Now, what if you wanted to quit being a member of the Democratic party, what would you do?

A. That's the same question.

Q. Oh, it is the same question? Okay. I wanted to make sure that it was. I didn't know that I had accurately asked that question. So you don't know how you would quit? Same answer?

A. Well, I suppose I could just change my vote. There isn't any philosophical process that you have to go through to actually change from one to the other, is there? I mean you don't have to realign your thinking so that you say, well, I'll discard this and accept this?

Q. Not that I know of.

A. Okay. So I don't know.

Q. Is there any mechanical thing that you know of that you have to change?

[11] A. Just vote.

Q. So you think the active voting then takes you into or allows you to quit being in one party and take up membership in another?

A. I think the appeal of a particular candidate would cause me to change my vote. As I've said, I've considered it at other times, but I have not. But if some candidate with the particular appeal appealed to me, I would probably change. Thus far, that hasn't happened to the extent that I actually did it.

Q. Following on that same philosophical plan, it's certainly hypothetical, is if eventually there were more candidates that you supported in another party rather than the Democratic party, then would you become a member of that party?

MR. GROTH: Objection, hypothetical. You can answer. He's asking you a purely hypothetical question. I don't know what my answer would be, but if you're willing to try to answer it, –

A. It's okay. Restate it.

Q. I guess you and I were talking and I think I was tracking you pretty well. You were talking about the imaginations you go through with one [12] candidate and maybe, although you haven't, maybe switching. If you reach a point where there are more of those candidates that you support are not in the Democratic party but in another party, then do you become a member of the other party?

A. Well, if there was an individual whose candidacy appealed to me, then I would try to vote for that individual. As far as leaving one party to go to another, unless that was a requirement, I probably wouldn't, but I would vote for the individual if they made it easier. It is difficult to switch or to split the ticket. That is difficult at the polling places.

Q. Difficult how so?

A. Well, you seem to be given a choice of supporting a straight ticket or individuals on that ticket or the other ticket, but you can't do both, not with those machines.

Q. Okay. Did you currently bring your identification with you today?

A. What kind?

Q. Any kind of photo identification. I believe I asked you to bring that with you.

* * *

[24] Q. You were asked some questions by Mr. Webber about your voting patterns. Do you typically vote in the primary election as well as the general election?

A. Yes.

Q. And what primary, what party's primary have you voted in, Democrat, Republican, Libertarian?

A. Democrat.

Q. Democrat?

A. Yes.

Q. So when you go to the primary to vote in the primary election, you have to ask for a Democratic ballot, don't you?

A. Yes.

Q. And that's sort of an outward manifestation of you becoming a Democrat, isn't it?

A. Yes.

[25] Q. Okay. Because you have to announce that publicly, don't you?

A. Yes.

Q. Or at least to the person who's working the polls?

A. Yes,

Q. And Mr. Webber asked you how you stop being a Democrat. We had a witness who he asked that question to and he said you stop being a Democrat when you die. Would you agree with that?

A. I suppose.

Q. Will you stop being a Democrat when you die?

A. I'll be a dead Democrat.

Q. Have you ever voted in the Republican party primary election?

A. No.

Q. Do you have any intention of ever voting in the Republican party primary election?

A. How far does intention go?

Q. Never mind. Do you know any other people who live in Lugar Towers who don't have a state or federal-issued photo ID?

A. I really don't know. They might have been more, you know, serious minded than myself.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant,
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of LOIS HOLLAND, a witness produced and sworn before me, Brandy L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the Office of the Attorney General, 302 West Washington Street, Indiana Government Center South, 5th Floor, Indianapolis, Indiana on the 18th day of November, 2005, at the hour of 9:39 a.m.,

pursuant to the applicable rules of procedure with written notice as to time and place thereof.

* * *

[5] Q. And is that here in Indianapolis?

A. Uh-huh.

Q. And what is your age?

A. Sixty-nine.

Q. And are you currently working or are you retired?

A. I just stay at home.

Q. You stay at home?

A. Oh-huh.

Q. Okay. And what activities do you have or hobbies do you have?

MR. GROTH: Objection to relevance.

A. I go to church and I sew and I cook and –

Q. What church do you go to?

MR. GROTH: Objection to the relevance, Doug.

A. Landmark Baptist.

MR. GROTH: Doug, let's not go into all her personal biography. I don't think that's important in this case.

Q. Where is it?

A. Landmark Baptist.

Q. Okay. And where is that located from your home?

A. Five Points and Thompson Road.

* * *

[7] [Q.] Apparently, at one time you answered a survey and I believe it was from the Democratic Marion County Central Committee was sent to your house and you filled out a survey card and from that card, they listed you as being someone who was potentially hurt by that law.

A. I didn't even remember signing it.

Q. Okay. So what happens today then is since your name was on that list, the other side, which is the side I represent, – the Attorney General defends the laws of the State of Indiana – gets to ask you questions, depose you and find out what you do know about the law or how it will affect you, so that's why we're here.

This is a deposition. As I'm talking, you can see the reporter transcribes things. You can see the attorneys. Mr. Osborn is here for the Marion County Election Board. Mr. Groth and Mr. Macey are here for the Marion County Democratic Central Committee and for the State Democratic Party. So we all have an opportunity to ask you questions. I get to go first.

You said you do not recall filling out a [8] card similar to this?

A. I don't remember it, but I probably did. (At this time State's Deposition Exhibit A was marked for identification.)

Q. It's been marked State's Deposition Exhibit A and it basically appears to be two sides photocopied on a sheet of paper. This is not your name. It is Bettie Weiss, but I'm just submitting it to see if you recall that card and you said you can't recall filling it out?

A. Uh-uh. Of course, I'm getting to that age. Alzheimer's kind of hits.

Q. I am too as far as that goes. Have you worked at precinct polling places before?

A. I've worked at Holy Cross twice and I worked at 111 a few years on Stamm Avenue.

Q. So you think maybe four elections that you've worked at?

A. I think a little more than that. I worked since about '95, I think. I don't remember, but I know I've been working a few years there.

Q. What job do you usually hold when you work at the precinct?

A. Clerk.

Q. You're the clerk?

[9] A. Uh-huh.

Q. Are you usually the Democrat clerk or the Republican clerk?

A. Well, I'm usually both of them sometimes. We got one lady about 86 years old that comes in there for half a day sometimes. She's been there for several years. Most of the workers that I work with has been there for several years. Its in my neighborhood really.

Q. And are you asked then to work by the Democrat precinct committeeperson?

A. Uh-huh.

Q. Okay. Who is that?

A. Mrs. Myrick, Virginia.

Q. Do you know how to spell her name?

A. M-Y-R-I-C-K.

Q. Prior to this deposition have you talked to Mr. Groth or Mr. Macey or anyone on behalf of the Democrat party?

A. N .

Q. Did you talk to anyone in the Democrat Marion County Central Committee about it?

A. I talked to Mr. Myrick. I didn't understand what it was about.

Q. Okay. And that would have been Virginia's [10] husband?

A. Yes.

Q. And did he explain to you what –

A. Yeah.

Q. – the case was about?

A. He's the one that gave me my registration card in 1998 and I didn't know him then, but they called me to work and then I found out who they were.

Q. And what did Mr. Myrick explain to you?

A. He said that Republicans was for it and the Democrats was against it because of people in the nursing homes.

Q. Okay. What I explained to you about the law before about showing a photo identification at a polling place, that was his understanding also, though?

A. Uh-huh.

Q. Have you ever voted for a candidate who was not a Democrat?

* * *

[13] A. Not that I recall. I usually vote in the primary and the election both, but I usually vote Democrat.

Q. Do you give money to the Democrat party?

A. No.

Q. Do you give money to any Democrat candidates?

A. No.

Q. Do you attend any Democrat meetings?

A. I have attended a few, yeah.

* * *

[15] Q. Do you always vote a straight party ticket?

MR. GROTH: Again, same objection. You don't have to answer that if you don't want to.

A. Sometimes, Not always.

Q. What is the main reason why you tend to vote for more Democrat candidates?

MR. GROTH: Objection. You don't have to answer that either. He has no right to inquire into your political ideology or why you vote a certain way.

A. Well, I usually like to vote for the person I think will do the best job.

Q. You like to what?

A. Vote for the person I think will do the best job. That don't always happen.

Q. If there were two candidates then and one of them you though did a better job who was not a Democrat, you would be willing to vote for them?

A. I don't know.

* * *

[17] my house.

Q. Have you ever voted absentee in your life?

A. Yeah, when I worked at Holy Cross I voted absentee.

Q. Okay. Because Holy Cross was out of your precinct?

A. Uh-huh. That's the first time I worked with Holy Cross, two times, and then I worked at 111 for a few years.

Q. And so if you're going to work out of your precinct on election day, then that's one of the reasons you would give for voting absentee?

A. Uh-huh.

Q. Now, do you intend to vote in the May primary?

A. I hope so, if I live that long.

Q. Okay. Now, would it be your intention to get some kind of – there's a State ID that you can get at the Bureau of Motor Vehicles with your photo on it. Do you intend to do that before the primary?

A. If it's required, I can do it, but I don't know.

Q. Do you still drive yourself?

A. No.

Q. How would you get to the BMV to get a –

[18] A. My husband would take me. He takes me to work.

Q. Pardon?

A. He takes me to work.

Q. And where is that?

A. When I go to the polls.

Q. Oh, to the polls. I see. Does he also drive you to church then?

A. Oh, yeah.

Q. So you are able to get out of the house with your husband as the chauffeur?

A. As a matter of fact, he's the one that pushes me out the door to go to church. I probably wouldn't get there.

MR. WEBBER: Well, thank you, Mrs. Holland. I have no further questions at this time. Bill might want to ask you a few questions.

CROSS EXAMINATION
QUESTIONS BY MR. GROTH:

Q. I just have a couple of questions for you. Where were you born?

A. Livingston, Tennessee.

[19] Q. And were you born in a hospital?

A. No, I was born at home, but I have a birth certificate.

Q. Is it a copy or an original?

A. It's copied. If you want to see it, it's copied from my family Bible. I had to get it in '56 or '55 when I went to work.

Q. Thank you.

A. And that's my registration.

Q. So you've retained your voter registration card since you were last registered in 1988; is that correct?

A. Yes.

Q. And you understand that if you take this to the polls, they won't let you vote if you don't have a photo ID under this new law? Did you understand that?

A. Well, maybe I can get one.

Q. Yeah. And do you understand that even if you took your birth certificate to the polls, they still wouldn't let you vote?

A. No, I didn't know.

Q. Has anybody told you what steps you would have to take in order to get the type of photo identification that you would need to vote in [20] the next election?

A. No.

Q. Does your husband work? Does he have a job?

A. He's retired.

Q. How far do you live from the closest BMV branch?

A. Not very far.

Q. Is it walking distance or would you have to drive?

A. We'd have to drive. I think there's one on South Emerson.

Q. And about how many miles is that from where you live?

A. Oh, it would probably be four or five, I don't know. Not very far.

MR. GROTH: That's all I have.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
TODD ROKITA, et al.,
Defendants.

WILLIAM CRAWFORD, et al.,
Plaintiffs,
vs.
MARION COUNTY ELECTION BOARD,
Defendant,
and
STATE OF INDIANA,
Intervenor.

The deposition upon oral examination of ROBERT G. YANCEY, a witness produced and sworn before me, Brand L. Bradley, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the State of Indiana at the home of Mr. Robert G. Yancey, 420 N. Alton Street, Indianapolis, Indiana on the 18th day of November, 2005, at the hour of 3:02 p.m., pursuant to the applicable rules of

procedure with written notice as to time and place thereof.

* * *

[6] Democratic Party as well as the Marion County Democratic Party was, "Please identify by name and address those associated with the Democratic Party that you were able to determine would be injured by implementation of the statute at issue," which is by this new law going into effect on the voter photo ID.

A. Yes, sir.

Q. Okay. And one of the people they put down here is No. 8, Ronald Yancey, 420 North Alton. And that's you?

A. Yes.

Q. And that brings us here today to ask you some questions. I've asked questions to all the people – or going to, hopefully, all the people on this list and I have just a short set of questions for you. I think what starts this in process is a survey that was taken by the county party, the Marion County Democratic Central Committee, in which you filled out a card. And I'll see if I can find that. We'll mark that as State's Deposition Exhibit A.

(At this time State's Deposition Exhibit A was marked for identification.)

Q. Do you remember filling that out in a survey [7] card?

A. No.

Q. You don't remember that?

A. No. Where was I doing this at?

Q. I'm not sure where you would have filled it out at. The basis of the card was asking you, "Did you work the Polls in November, 2004?"

A. Yes.

Q. Okay. And so you probably did fill it out and it said, "Do you own a driver's license?"

A. No.

Q. And it said, "Do you have other valid State or Federally-issued Photo I.D.?"

A. My State ID, yes.

Q. Okay. And what kind of ID do you have?

A. Isn't there a State ID?

Q. Yes.

A. I have that.

Q. Oh, do you?

A. Yes.

Q. Do you have that with you?

A. In my wallet.

Q. Will you get that for me, please?

A. Sure.

(At this time there was a discussion [8] off the record.)

Q. Okay. For the record, Mr. Yancey, you've handed me an Indiana Identification Card with your photo on it and an expiration date of 5/31, 2009?

A. Yes.

MR. WEBBER: Okay. So I will hand that to Mr. Macey.

MR. MACEY: Yeah, I will stipulate that that is an Indiana State photo ID with an expiration date, the date that you stated on the record. Thanks, Mr. Yancey.

MR. WEBBER: So, Mr. Yancey, the reason we came out here was to determine whether or not you were going to be able to vote in the May primary if the new law is passed and that's all you need. So you can vote.

THE WITNESS: I hope so.

MR. WEBBER: Yes, I understand that. So I don't think there's any need to go any further. I apologize for taking your time, but the list we thought basically was going to be people that did not have cards. You've got one. You're good to go then, okay? So that's good.

THE WITNESS: I work at the polls.

[9] Q. And you also work there, yes.

A. Right.

Q. You work for the Democrats?

A. Yes.

MR. WEBBER: Well, they got that right. So I have no further questions for you at this deposition.

* * *

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November 30, 2005

Hamilton says state's voter ID law justified

Star report

Former U.S. Rep. Lee Hamilton, D-Ind., says Indiana was right to adopt a voter ID law last year, but needs to balance that with aggressive efforts to encourage voter participation.

Hamilton was a member of a national bipartisan panel that recently recommended, among other reforms, that all states adopt laws requiring people to show identification before being allowed to vote.

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He will lead a discussion by lawmakers and election officials of that issue and other election reforms Dec. 7 at Franklin College.

Speaking to reporters Tuesday, Hamilton said the national panel led by former President Jimmy Carter and former Secretary of State James Baker, decided that it wasn't enough just to issue their 41 recommendations; they also needed to push for those reforms in their home states.

One reform Hamilton would like Indiana to consider is removing the oversight of elections from partisan control. In Indiana, as in many states, the chief election officer is the elected secretary of state, currently Republican Todd Rokita.

[Original Was A Postcard]

636-8477	YES	NO
Did you work the Polls in November, 2004?	☒	☒
***Do you own a Driver's License**	☐	☑
†Do you have other valid State or Federally-Issued Photo I.D.?	☐	☑

If so, What type of I.D. is it? _____

Name: Helen L. Wright

Address: 1163 N. Holmes Ave.

Age: 1-3-41 (63)

About how long have you worked your polls?
Twenty Five Yr.

[Postmark Date] [Postage]

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO 481
INDIANAPOLIS IN
POSTAGE WILL BE PAID BY ADDRESSEE

MARION COUNTY DEMOCRATIC PARTY
603 E WASHINGTON ST STE 100
INDIANAPOLIS IN 46209-6296

(Filed Dec. 1, 2005)

Report on *Indiana Democratic Party et al v. Todd Rokita et al.*

Jonathan N. Katz
California Institute of Technology

7 November 2005

I was asked by legal counsel in this case to evaluate the reports of Dr. Marjorie Randon Hershey and Mr. Kimball W. Brace on the impact of Indiana's new requirement that voters present proof of identification before being allowed to vote (Senate Enrolled Act 483).

A summary of my basic findings is as follows:

- Dr. Hershey's report is pure speculation without any quantitative evidence on the likely magnitude and distribution across Indiana's citizens of the law's likely impact.
- Mr. Brace's analysis, while more quantitative than Dr. Hershey's, suffers from several serious statistical flaws that prevent any scientifically valid conclusions to be drawn from it on the likely impact of SEA 483 on voter turnout.

In the next section of the report I review my qualifications. I then examine the reports of Dr. Hershey and Mr. Brace in turn.

1 Qualifications

I am currently Professor of Political Science at the California Institute of Technology. I was also

formerly on the faculty at the University of Chicago and a visiting professor at the University of Konstanz (Germany). A complete copy of my curriculum vitae is in Appendix A.

I received my Bachelor of Science degree from the Massachusetts Institute of Technology and my Masters of Arts and Doctor of Philosophy degrees, both in political science, from the University of California, San Diego. I have also done post-doctoral work at Harvard University and the Harvard-MIT Data Center.

I have done extensive research on American elections and on statistical methods for political science data. I am a member of the Caltech/MIT Voting Technology Project, serving as co-director since October 1, 2005. I have written numerous articles published in the leading journals as set forth in my curriculum vitae. I currently sit on the editorial board of three leading journals – *Political Analysis, Electoral Studies* and *Political Research Quarterly* – and have served as a referee of manuscripts for most of the major journals in my fields of research.

As part of my work with the Caltech/MIT Voting Project, I have a number of current research projects related to the evaluation of elections. For example, I have examined data with my colleague R. Michael Alvarez on manual recounts of elections from Los

Angeles County.[1] I am also working a project jointly with the Election Science Institute (formerly Votewatch) examining audit data from the 2004 U.S. Presidential election in Ohio.

Over the past decade, I have testified or consulted in numerous elections cases involving the Federal Voting Rights Act, the evaluation of voting systems, or the statistical evaluation of electoral data. I have testified or consulted in court cases in the states of Arizona, California, Georgia, Illinois, Maryland, Michigan, Missouri, New Mexico, Oklahoma, Texas, and Washington.

2 Report of Dr. Hershey

Dr. Hershey's report in this case is essentially a literature review of the rather voluminous scholarship in political science, and some allied social sciences, on voters' decisions to turnout in an election that presents no original analysis as to the likely quantitative impact of implementing Senate Enrolled Act 483 (SEA 483) in Indiana. Her overall characterization of the literature, however, is fairly accurate. There is general agreement that increasing costs of voting decreases turnout.

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[1] California law mandates that all jurisdictions randomly select one percent of their precincts to be manually recounted before certifying the vote tallies in any election. I have also personally witnessed two of these recounts.

Most of this literature, as noted in her report, examines the impact on changes in registration requirements, for example, moving the close of registration date closer to the election day. The typical data used in these studies are either survey data, such as from the American National Election Study or the Current Population Study, or aggregate state level returns that are compared over time or across localities. Since there is both temporal and cross-sectional variation in registration laws, the quantitative impact of different implementations of registration laws on voter turnout can be scientifically assessed much in the same way that the effect of a drug can be examined by comparing treated and control groups.[2]

There are no states or localities that have implemented an identification requirement as described in SEA 483 to the best of my knowledge.[3] In fact, even if there were such a jurisdiction, an argument would have to be made as to why both its implementation as well as its underlying demographic and political make-up was similar enough to be informative about

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[2] Although some care must be taken because unlike clinical drug trials, the choice of registration law is not random. There are appropriate statistical models that can account for this selection effect, however.

[3] There are a number of other states, for example, Georgia, that have enacted similar legislation, but I do not know of any scientific studies that have examined the impact of these new laws yet.

the likely impact of the voter identification requirements adopted in Indiana. Instead, Dr. Hershey is left to purely speculate by analogy to the findings about voter registration in the literature. These speculations are not quantitative, therefore there is no real way to assess the substantive impact on voter turnout of the new law. I also note that there is not any attempt to measure the uncertainty in this "forecasted" impact as is generally accepted scientific practice. There must be at least some uncertainty since Dr. Hershey (as well as Mr. Brace) are attempting to forecast the law's impact on future elections.

Further it is not clear to me that voter registration is a particularly good proxy for understanding the likely impact of the voter identification law, since all voters must register in order to vote, but a good number of registered voters likely already have acceptable identification.[4] This is noted by Dr. Hershey in her report where she goes on to say that "[t]herefore the impact of the new law on voter turnout would be considerably smaller [than a change in the voter registration system]." (p.12). But the real question is how much smaller would it be? Dr. Hershey's report presents no evidence to this crucial question.

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[4] In fact, the change in the law will likely increase the number of citizens of Indiana who will have state or federally issued identification. See my discussion of Mr. Brace's report below.

Dr. Hershey then goes on to opine that Indiana's new identification requirements will have differential impact on certain subgroups of voters. In particular, she argues that voters with lower socio-economic status (SES) – i.e., low education and/or income – will more likely be deterred from voting under the new law. Again she is arguing by analogy – without any direct evidence – from the findings on changes in registration laws on turnout. She cites the studies by Wolfinger and Rosenstone (1980) and Leighley and Nagler (1984) as supporting her case for a differential impact. However, in a more recent study by Dr. Jonathan Nagler (the same author that she cited in her report) published in the *American Political Science Review,* the leading journal in political science, casts doubt on this claim in the registration literature. In the conclusion to his newer study Dr. Nagler states "[t]he modest contribution of the empirical research presented here is to show that what was thought to be a fact, namely, that poorly educated persons are more deterred from voting by registration laws than well-educated persons, is not a fact." (Nagler 1991:1402). Therefore, any suggested differential impact by SES is not even a finding with regard to registration laws and cannot, therefore, form the basis of her claims about the likely differential impact of the new voter identification law.

3 Report of Mr. Brace

The report of Mr. Kimball Brace in this case details his efforts to match records from the Indiana's

Bureau of Motor Vehicles (BMV) on residents of Indiana with either a valid drivers license or identification card to a list of registered voters in Marion county. He additionally aggregated this data to use Federal Census data in an attempt to determine the impact of the new voter identification law by socio-economic status. Unfortunately, Mr. Brace's analysis is seriously flawed on a number of grounds and is not, therefore, informative on the likely impact of the SEA 483.

The central question in this case is what will be the impact of the law on the turnout of Indiana voters in *future* elections – in the language of statistics this is the "quantity of interest". Mr. Brace's analysis instead examines what fraction of *current* Marion county registered voters have a valid state identification, either driver's license or identification card. He finds that he is unable to match 8.42% of them even using the loosest of match criteria to the BMV list of individuals with valid state identification (Table C of Mr. Brace's report). Mr. Brace then claims that these potential voters allegedly without identification will be challenged when they go to vote, or in other words, they will be effectively disenfranchised. The implicit assumption is that the new law will have no effect on potential voters future behavior. As we know since the pioneering work of Dr. Robert Lucas on the statistical forecasting of the consequences of changes in economic policy, it is difficult to make such forecasts because individual behavior is not static. Dr. Lucas noted that changes in policy will in general change

the incentives of individuals and thus their observed behavior (Lucas 1976). In fact, this problem is now known as the "Lucas critique" in literature on quantitative policy analysis.[5]

In order to see this more clearly, consider older voters, those 65 and older. In a study from Wisconsin cited by Dr. Hershey, it was found that 23 percent of this group did not have a driver's license or photo identification. Similarly, a survey done by AARP found that 10 percent of registered voters over age 65 in their sample did not have a valid state driver's license or identification card.[6] This does not come as a surprise, since presumably a good number of these older individuals are either unable or unwilling to drive, so there is no reason for them to pay the cost, actual money and time, to maintain their license. However, once the new voter photo identification law takes effect in Indiana a license or identification is now more valuable to these older individuals since it will allow them to vote. It may, therefore, be worthwhile for them to obtain and maintain either a valid driver's license or identification card in the future. In fact, not only does the new law in essence make a license or identification card more valuable, the law

[5] Dr. Robert Lucas won the 1995 Nobel prize in economics in part for this observation of the dynamic nature of individuals' response to changes in government policy.

[6] Presumably the difference between the two studies, besides they are about different states is that one of the samples is all individuals whereas the other is only registered voters.

also lowers the cost since it allows for the BMV to issue acceptable identification free of charge. In fact, this likely change in behavior is born out in the AARP survey where 58 percent of the respondents without a license or identification said it was at least somewhat likely they would get one in order to vote.[7]

In fact, as we consider older voters, we see another problem with Mr. Brace's analysis, the new voter identification law only applies to voters who are voting in a polling station on election day. Presumably at least some fraction of registered voters over age 65 without a driver's license will vote via an absentee ballot.[8] Absentee voters are unaffected by the new law. Thus, Mr. Brace's study is over estimating the impact of the new law even if there were no other problems with it.

The design of Mr. Brace's study is also likely to over-estimate the likely impact of the new voter identification law for two further reasons. First, he considers only Indiana issued identification. The law

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[7] We should be careful how we generalize this to the entire population of registered voters age 65 or older without currently valid identification because the subsample of respondents who answered this question is only 29. This standard error of this estimate is very large, much larger than the 3.38 percentage points stated for the entire sample based on 843 respondents. However, there is not enough information in the survey for me to calculate an appropriate sampling error for the response to this question.

[8] It is my understanding that under Indiana law any voter over the age of 65 is entitled to vote absentee if they so desire.

does allow Federally issued identification, such as a passport or military identification, as proper proof of identity for the purpose of voting. At least some fraction of registered voters he was unable to match to the BMV list will have Federal identification.[9] Second, Mr. Brace's analysis covers only registered voters in Marion county, which even he recognizes is likely to have the highest number of non-drivers since it is the most urban of the counties and has a metro bus system (Brace Report, p. 5). The quantity of interest in this case is the impact of the new law of turnout on all Indiana voters, not just Marion County voters. Since his analysis is based on a non-representative sample, Indiana voters as a whole, in the language of statistics, his analysis suffers from a sample selection problem, which occurs when we do not draw a representative sample for our population of interest. In general, no valid statistical claims can be made from a study with a non-representative sample unless some further, rather sophisticated, statistical corrections are made. Mr. Brace has made no such corrections.

Turning to Mr. Brace's demographic analysis, it is even more problematic. Since neither the BMV nor

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[9] In fact, some proportion of Indiana's registered voters will be in the active military service or be a family member of an individual on active duty military and covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), who vote by absentee ballot and are not affected by the new law but are counted in Mr. Brace's analysis.

the voter registration data contains any demographic information, Mr. Brace was forced to aggregate his data to the level of census block groups in order to estimate the impact of the law on different socio-economic groups. This analysis suffers from all of the problems I have previously pointed out and also suffers from what statisticians and quantitative social scientists call aggregation bias (see King 1997 for a general discussion of the problem and possible solutions). Aggregation bias occurs when we try to make inferences about *individual* behavior, in this case being registered and having a matched BMV record, from data only about *groups* of individuals, such as census data.[10]

The problem can probably best be seen from an example where were we know the true answer. A recent study led by Dr. Andrew Gelman showed that aggregate Republican vote share appears strongly-inversely related to average state income (Gelman, et al. 2005). An untrained analyst might, therefore, conclude that lower-income individuals are more likely to vote Republican. This, however, would be incorrect. As we know from survey data, the relationship is actually reversed at the true individual level. What causes the finding to reverse with the aggregate data? It turns out that the average voter in relatively poor Mississippi was more likely to vote for President Bush than the average voter in relatively

[10] This is known as ecological fallacy in the statistical literature (King 1997).

wealthy Connecticut, thus reversing the correlation. In other words, the aggregate data masked this clear and strong individual level finding.

Instead of aggregate vote share, Mr. Brace attempts to correlate the aggregate fraction of registered voters with matched BMV listings to aggregate income or eduction levels. The fundamental statistical problem is identical to the Gelman, et al. (2005) study. Thus, even though Mr. Brace finds some correlation between socio-economic status and having a state issued identification at the aggregate level, this relationship may be non-existent or reversed at the true individual level. Much like with sample selection problem mentioned above, it is not possible to make any scientifically valid inferences unless fairly sophisticated statistical techniques are used to correct for the potential aggregation bias. These corrections were not done by Mr. Brace.

Finally, Mr. Brace seems to not treat his analysis as a statistical estimation problem even though he is trying to forecast the impact of the SEA 483. However, because this is a statistical estimation problem, Mr. Brace's analysis must include generally accepted estimates of uncertainty since he does not (nor does anyone) know what the actual effect of the new law will be. Without any measure of estimation uncertainty, no scientifically valid inferences can be drawn from his study.

In conclusion, Mr. Brace's report presents no scientifically valid analysis of the impact of SEA 483.

Thus, for example, Mr. Brace's concluding claim that 989,000 registered voters, or any for that matter, in the state could be challenged when they try to go vote in November, 2006 is not supported with his flawed analysis and is pure speculation at best.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	:	
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	:	No. 1:05-CV-00634 SEB-VSS

Washington, D.C.
Friday, November 11, 2005

Deposition of KIMBALL W. BRACE, called for examination by counsel for the Intervenor-Defendant, State of Indiana, in the above-entitled matter, pursuant to notice, the witness being duly sworn by CARLA L. ANDREWS, a Notary Public in and for the District of Columbia, taken at the offices of Jones, Kay, 51 Louisiana Avenue, N.W., Washington, D.C. 20001, at 9:47 a.m., Friday, November 11, 2005, and the

proceedings being taken down by Stenotype by CARLA L. ANDREWS and transcribed under her direction.

* * *

[34] Madam Reporter, I will start again. The reason I said non-matches is because the comparison ultimately that you make, both in education and in median household income, is the lower-income bracket to the higher-income bracket and the lower educational bracket to the higher educational bracket; isn't that correct?

A That's correct.

Q Did you attempt to establish if there was any racial impact to the passage of the new voter ID law in Indiana?

A As part of the calculation and part of the programming, we did look at the racial data, also.

Q There was no specific racial category, though, in your report. Why wasn't there?

A Basically, we could not conclude one way or the other in terms of the distinction in terms of racial categories.

Q When you say you cannot conclude one way or the other whether or not – let me make sure that I can phrase this correctly. You couldn't conclude whether or not race played – a role in whether – in the amount of unmatched names?

A I don't know that we were necessarily looking [35] at whether or not race placed a role. What we were interested in is whether or not – if you look at the various racial categorizations that are in the census, whether the unmatched are more predominantly one race or another race.

Q Okay. That's said much better. I should have just asked you the question what you meant by that. . . .

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	)
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	No. 1:05-CV-00634 SEB-VSS

Supplementary Evidentiary Material by Plaintiffs William Crawford, United Senior Action of Indiana, Indianapolis Resource Center for Independent Living, Concerned Clergy of Indianapolis, Indianapolis Branch of the NAACP, Indiana Coalition of Housing and Homeless Issues, Joseph Simpson

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	)
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	No. 1:05-CV-00634 SEB-VSS

Affidavit of Melissa Madill

Comes now Melissa Madill, being duly sworn upon her oath, and says that:

1. I am the Executive Director of the Indianapolis Resource Center for Independent Living ("IR-CIL").

2. We assist our clients in obtaining the information necessary to obtain identification cards from the Bureau of Motor Vehicles and in obtaining the cards.

3. We do not assist in paying for the documents, like a birth certificate, that are necessary in order to obtain an identification card.

4. With the passage of the Voter ID law that IRCIL is challenging in this case we will have to devote more of our institutional resources in assisting persons with collecting the documentation necessary to obtain an identification card from the Bureau of Motor Vehicles.

5. This will require us to devote limited staffing resources to this issue and will mean that we will not be able to devote staff to other issues that are important to our clients.

VERIFICATION

I declare under the penalty of perjury that the foregoing representations are true. Executed on: 12-14-2005

/s/ Melissa Madill
Melissa Madill

Prepared by:
Kenneth J. Falk
Attorney at Law

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs, v. TODD ROKITA, et al., Defendants.	
WILLIAM CRAWFORD, et al., Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	No. 1:05-CV-00634 SEB-VSS

Declaration of Rev. Leroy S. Dinkins

Comes now Rev. Leroy S. Dinkins, being duly sworn, and says that:

1. I am a member, and currently the Vice President, of Concerned Clergy of Indianapolis.
2. I am a resident of Indianapolis.
3. I currently have a valid driver's license.

4. However, I am strongly opposed to any law that requires me, or any other person to show a driver's license or other photo identification in order to vote.

5. The reason for this is that once a person registers to vote there should be no further need for identification other than the person's signature.

6. Therefore, I would like not to have to show my identification in order to vote.

7. I am also opposed to the identification requirement because some persons will not be able to obtain the required identification or will be able to do so only with great difficulty and therefore they will not be able to vote or will be discouraged from voting.

Declaration

I declare, under penalties of perjury, that the foregoing is true. Executed on:

12-12-05
Date

/s/ Leroy S. Dinkins
Rev. Leroy Dinkins

Prepared by:

Kenneth J. Falk
Indiana Civil Liberties Union

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, et al.,	)	
Plaintiffs,	)	
v.	)	
TODD ROKITA, et al.,	)	
Defendants.	)	
WILLIAM CRAWFORD, et al.,	)	No. 1:05-CV-00634 SEB-VSS
Plaintiffs,	)	
v.	)	
MARION COUNTY ELECTION BOARD,	)	
Defendant,	)	
and	)	
STATE OF INDIANA,	)	
Intervenor.	)	

Affidavit of Margie Oakley

Comes now Margie Oakley, being duly sworn upon her oath, and says that:

1. I am the Secretary of Concerned Clergy of Indianapolis ("Concerned Clergy") and, as I indicated in my deposition, I have been designated to speak for the organization in this case.

2. Concerned Clergy is dedicated and committed to assuring that persons are registered to vote and do vote.

3. With the passage of the Voter ID law that Concerned Clergy is challenging in this case, Concerned Clergy has already discussed that the organization will have to assist persons with the costs of birth certificates so that they may obtain identification.

4. We have also discussed that Concerned Clergy will have to provide transportation to persons so they can get to the license branch and the Health Department so that they can obtain the identification card from the Bureau of Motor Vehicles in order to vote.

5. Concerned Clergy will therefore have to divert limited funds and otherwise expend its resources because of the challenged statute.

VERIFICATION

I declare under the penalty of perjury that the foregoing representations are true. Executed on: 12-12-05

/s/ Margie Oakley
Margie Oakley

Prepared by:
Kenneth J. Falk
Attorney at Law

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, v. TODD ROKITA, *et al.*, Defendants.	)	
WILLIAM CRAWFORD, *et al.*, Plaintiffs, v. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	)	No. 1:05-CV-00634 SEB-VSS

Affidavit of Roderick E. Bohannan

Comes now Roderick E. Bohannan, being duly sworn upon his oath, and says that:

1. I am the past president of the Indianapolis branch of the NAACP and I am currently the head of the local branch Legal Redress Committee.

2. I have been designated to speak for the organization in this case.

3. I am a member of the Indianapolis branch of the NAACP.

4. Although I have an Indiana driver's license, and therefore I have the identification necessary to vote, I strongly object to having to show this photo identification in order to vote. I believe that it should be sufficient to register to vote and sign in to vote at the polls. I believe the photo identification requirement makes it more difficult to vote and voting should be made as easy and burden free as possible.

5. The Indianapolis Chapter of the NAACP has already begun discussing the organizational steps that we will have to take in response to the new voter identification law. We do not have money to assist persons to pay for birth certificates so they can obtain an identification card from the Bureau of Motor Vehicles. However, we will be involved in educational and outreach efforts to inform the public about the law so as to maximize the number of persons who will be able to vote. These efforts will divert our chapter from engaging in other activities inasmuch as we have limited time and membership resources.

Declaration

I declare under penalty of perjury that the foregoing is true and correct. Executed on 12.12.2005.

/s/ Roderick E. Bohannan
Roderick E. Bohannan

Prepared by:

Kenneth J. Falk
Indiana Civil Liberties Union

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, Plaintiffs, vs. TODD ROKITA, *et al.*, Defendants.	CAUSE NO: 1:05-CV-0634-SEB-VSS
WILLIAM CRAWFORD, *et al.*, Plaintiffs, vs. MARION COUNTY ELECTION BOARD, Defendant, and STATE OF INDIANA, Intervenor.	

APPENDIX OF EVIDENCE IN SUPPORT OF DEMOCRATS' CONSOLIDATED RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT OF STATE AND COUNTY DEFENDANTS, AND REPLY IN SUPPORT OF DEMOCRATS' MOTION FOR SUMMARY JUDGMENT

* * *

EXHIBIT 25
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,	)	
Plaintiffs,	)	
vs.	)	CAUSE NO: 1:05-CV-0634-SEB-VSS
TODD ROKITA, *et al.*,	)	
Defendants.	)	
	)	
WILLIAM CRAWFORD, *et al.*,	)	
Plaintiffs,	)	
vs.	)	
MARION COUNTY ELECTION BOARD,	)	
Defendant,	)	
and	)	
STATE OF INDIANA,	)	
Intervenor.	)	

SUPPLEMENTAL AFFIDAVIT OF MARJORIE R. HERSHEY

Comes now Marjorie R. Hershey, and after being first duly sworn upon her oath, deposes and says as follows:

1. I am the same Marjorie R. Hershey who submitted a report on behalf of the Democratic Party plaintiffs and which was submitted to the Court on October 31, 2005 in conjunction with the Democrats' Motion for Summary Judgment. The purpose of this Affidavit is to respond to the report submitted by the State Defendants of Dr. Jonathan Katz submitted in connection with the State Defendants' Response to Democrats' Motion for Summary Judgment.

2. The first main point of my report was that the greater the cost of voting, the fewer people there are who will vote. In my report I cited scores of empirical studies that have all come to this same conclusion. Katz agrees that I have characterized the findings of all of those studies accurately, and that it is a consistent finding of the political science literature that when the costs of voting are greater, fewer people will vote. Katz contends that one more empirical test, that is to say a test of Indiana's new photo identification requirements, might somehow produce different results than all of the empirical studies I cited in my report. This reminds me a bit of the definition of insanity – the belief that by doing the same thing over and over again, you can get different results. However, Katz does not present any argument or empirical evidence that the result of the Indiana photo ID law and the new burdens and obligations it imposes on Hoosier voters, particularly those who currently do not possess the required form of photo identification, ought to differ from the scores of cases in which we have seen clear evidence that

raising the cost of voting proportionately reduces the turnout.

3. The second main point of my report is that the requirement posed by Indiana's new photo identification law is a cost imposed on voting. Katz does not dispute that. He makes no argument that this particular cost will somehow behave differently from other costs and fail to reduce voting rates. All he states is that there is no evidence as to exactly what number of voters will be deterred from voting by this increased cost. He does not and cannot dispute that some voters will be deterred from voting by the increased cost, because that is what the literature shows us in a very large number of previous cases. The suppression of any voter turnout is a serious issue because of the importance of the right to vote. We are not talking about somebody being deterred from renting a movie or being permitted to purchase cold medicine. We are talking about reducing the number of people who choose to exercise their most fundamental right in a democracy, the right to vote.

4. My third point is that the impact of this cost will be felt especially by certain socio-demographic groups – elderly people, less affluent people, members of minority groups, and people who reside in big cities where such groups of people are more likely to be found, cities such as Indianapolis, Gary and Fort Wayne. Katz uses one piece of evidence to dispute this point. He says that my characterization of the literature is accurate, with the exception of one article. He claims that this article is sufficient to refute all the

other evidence because it is (a) more recent and (b) more statistically appropriate. The article he cites, Jonathan Nagler, "The Effect of Registration Laws and Education on U.S. Voter Turnout," ***American Political Science Review***, vol. 85 (December 1991), pp. 1393-1405, is a research note, not a full article. Research notes are papers regarded by editors and reviewers as not meriting the journal space that would be required by a full article, but worthy of at least some lesser attention. Although this article was published somewhat more recently than the research it refutes, it in fact uses the exact same data as the other research – the same surveys, the same time period. Although this research note appeared in 1991, political scientists and other students of voting continue to cite the original findings of the academic literature I have cited in my report, which concludes that the cost of voting falls more heavily on disadvantaged groups. In short, although the profession has had ample time to reconsider these findings, this research note was not sufficiently persuasive to cause scholars to do so. Furthermore, I assume that if its findings had been replicated at some point during the past fourteen years, Katz would have pointed that out. So this is basically the only piece of contrary evidence in an otherwise completely consistent body of academic literature.

5. Finally, Katz admits that 42% of older respondents say they were not at all likely to get a photo identification just in order to vote. Thus, he is acknowledging that the photo identification

requirements will selectively affect 42% of older voters who lack driver's licenses. If that is so, then the argument that this percentage might be lessened by having other forms of identification is irrelevant. The fact is that this requirement, in itself, selectively suppresses the vote. All he can argue is that the suppression effect will not be as widespread. But if it exists at all, there is a new and substantial burden on the right to vote.

6. In his general remarks about my argument, Katz claims that I am speculating or "reasoning by analogy." I disagree. If we have extensive evidence that increased costs reduce voter turnout, and if Katz and I agree that the photo identification requirements constitute a cost, then that is an inference derived from direct observation and statistical corroboration. It does not seem to me to be any more speculative than the reasoning that if a poll tax increases the cost of voting for a group, then the poll tax will reduce turnout.

Further affiant sayeth not.

/s/ Marjorie R. Hershey, Ph.D.
Marjorie R. Hershey, Ph.D.

STATE OF INDIANA
COUNTY OF MONROE

Subscribed and sworn to before me by Marjorie R. Hershey on this 22nd day of November, 2005

Signature
/s/ Cheryl K. Ammon
Notary Public

CHERYL K. AMMON
NOTARY PUBLIC STATE OF INDIANA
LAWRENCE COUNTY
MY COMMISSION EXP. MAR. 18, 2008

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 06-2218

WILLIAM CRAWFORD, *et al.*,
Plaintiffs/Appellants,
v.
MARION COUNTY ELECTION BOARD,
Defendant/Appellee.

No. 06-2317

INDIANA DEMOCRATIC PARTY, *et al.*,
Plaintiffs/Appellants,
v.
TODD ROKITA, *et al.*,
Defendants/Appellees.

On Appeal from the United States District Court
for the Southern District of Indiana,
No. 1:05-cv-00634-SEB-VSS
The Honorable Sarah Evans Barker, Judge

JOINT SUPPLEMENTAL APPENDIX OF APPELLEES ROKITA, KING, AND ROBERTSON, INTERVENOR/APPELLEE THE STATE OF INDIANA, AND APPELLEE THE MARION COUNTY ELECTION BOARD

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF INDIANA; and KRISTI ROBERTSON and J. BRADLEY KING, Co-Directors of the Indiana Election Division, in their official capacity, Defendants.	Civil Action No. _____ 1:06-cv-1000-RLY-TAB

CONSENT DECREE AND ORDER

(Filed Jun. 27, 2006)

The United States of America filed this action pursuant to Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-6, to enforce the State of Indiana's obligations concerning voter registration list maintenance in elections for Federal offices. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 1973gg-9.

The State of Indiana is covered by the requirements of Section 8 of the NVRA with respect to elections for Federal office. *See* 42 U.S.C. §§ 1973gg-1(4), 1973gg-2(b). Section 8(a)(4) of the NVRA requires

that "[i]n the administration of voter registration for elections for Federal office, each State shall ... conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of – (A) the death of the registrant; or (B) a change in the residence of the registrant. . . ." 42 U.S.C. § 1973gg-6(a)(4). Section 8 allows for the immediate removal of a voter from a registration list when the voter has died, been convicted of a disqualifying crime, or when the voter requests to be removed. *See* 42 U.S.C. § 1973gg-6(c)(2)(B). Section 8 of the NVRA sets forth specific notice procedures and time frames for removing a voter when the State or local county registrar obtains information that a voter no longer lives at his/her registration address of record (*i.e.*, when the State receives undeliverable election mail or returned jury notices). *See* 42 U.S.C. §§ 1973gg-6(b)-(f). The State must comply with these notice provisions and time lines before removing such voters from its registration list.

Notwithstanding these list maintenance obligations, Indiana has failed to conduct an adequate general program of list maintenance that makes a reasonable effort to identify and remove the names of ineligible voters from the voter registration list in elections for Federal office, to remove such ineligible voters, and to engage in oversight actions sufficient to ensure that local election jurisdictions identify and remove such ineligible voters. As a result, the State has violated the registration list maintenance

obligations under Section 8 of the NVRA, 42 U.S.C. § 1973gg-6.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties negotiated in good faith and hereby agree to the entry of this Consent Decree ("Decree") as an appropriate resolution of the claims alleged in the United States' complaint. The parties agree to waive a hearing and, thus, stipulate that each provision of this Decree is appropriate and necessary.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. *Deceased Voters and Duplicate Registrations.* On or before June 30, 2006, the Indiana Election Division shall distribute notices regarding the more than 29,000 registrants who may be deceased and 290,000 registrations which may be duplicates, which were identified by the State when it implemented the new statewide, computerized database under the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15483(a), to each county voter registration office for appropriate action. The State shall require each county voter registration office to make a determination, consistent with all notice requirements mandated by law, on these potentially invalid registrations by August 2, 2006, including the removal from the list of eligible voters of any voter registration that has been positively identified as being from a deceased

voter or as a duplicate registration. The State shall provide a report to counsel for the United States on or before August 16, 2006, on a county by county basis, regarding the total number of ineligible voters identified as duplicate or deceased in each county, the total number of voters removed in each county, the total number of voters placed on the inactive list in each county, and the number of dead or, duplicate registrations where the county took no action.

2. *Statewide Mailing.* On or before June 30, 2006, the Co-Directors shall take reasonable efforts to identify voters who are ineligible to vote by conducting a statewide mailing of election-related materials, via first class non-forwardable mail, to all registered voters. The program must comply with the requirements of Section 8(b) of the NVRA, 42 U.S.C. § 1973gg-6 and Indiana Code § 3-7-38.2-16. To the extent that any mailing is returned as undeliverable with no forwarding address or a forwarding address outside the registrar's jurisdiction, the State shall send a follow-up notice letter by forwardable mail to the voter and a postage prepaid address verification card, as set forth in 42 U.S.C. § 1973gg-6(c)-(d) and Ind. Code § 3-7-38.2-2, whereby the voter can confirm his or her address. Where the mailing is returned as undeliverable with a forwarding address inside the registrar's jurisdiction, the State shall ensure that voter records are updated in accordance with Section 8(f) of the NVRA. 42 U.S.C. § 1973gg-6(f). The State shall ensure that each county processes returned and undeliverable address verification

cards in accordance with State and Federal law. This program must be completed on or before August 10, 2006.

3. *Report on Statewide Mailing.* On or before August 25, 2006, the State shall provide counsel for the United States with a report that identifies, on a county by county basis, the number of voters who were identified as potentially ineligible through use of the measures set forth in Paragraph 2, *supra,* the number of voters actually removed from the registration database and the total number of voters placed on inactive status after confirmation mailings. In addition, the State will provide the total number of active and inactive voters in each county in the State as of August 25, 2006.

4. *Written Plan for Compliance.* During 2007, the Co-Directors shall develop a written plan for identifying and deleting ineligible voters on the State's computerized database, as required in Section 303(a)(2) of HAVA, 42 U.S.C. § 15483(a)(2). In addition, the plan shall set forth the State's procedure for tracking whether each county voter registration office is complying with the list maintenance requirements of Section 8 of the NVRA, including whether the registration office is identifying and removing voters who have died, been convicted of a disqualifying crime, or who have moved. This plan must include a means of tracking whether county voter registration offices are properly: (1) acting on State-provided information obtained from the statewide voter registration database regarding voters who may have

become ineligible (such as potential deaths or duplicates); (2) researching and acting on other specific information provided in writing by voters that calls into question those voters' continued eligibility to vote at their currently registered addresses, such as jury declinations or county or state tax filings which claim non-resident status; (3) canvassing their registered voter lists to locate voters who have died or moved; (4) using canvass information to update voter registration rolls for voters who have moved within the election jurisdiction consistent with Section 8(f) of the NVRA; (5) sending a forwardable confirmation notice under Section 8(d) of the NVRA to voters who may have moved outside of an election jurisdiction or for whom there is no forwarding information; (6) placing voters who do not respond to the confirmation notice into an inactive status that will indicate the date they were placed in such status; (7) removing inactive voters who do not vote or appear to vote during the two Federal general election cycles following the date the confirmation notice is sent or who indicate in writing that they have moved outside of the jurisdiction; (8) ensuring that eligible voters on inactive status remain on the voter registration list during the period of the two Federal general election cycles following the date the confirmation notice is sent, and that they can cast valid ballots on election day during that period, upon proper assertion of eligibility, if required under state law; and (9) returning eligible inactive voters to active status if they properly reactivate their registration. Where this tracking information indicates that a county voter registration office is

nonconducting list maintenance activity in accordance with the NVRA and State law, the Co-Directors shall contact the county voter registration office to ensure compliance with the law and, if necessary, take appropriate action against the county, including litigation, if it fails to comply with Federal and State law.

5. *Training.* The Co-Directors, in concert with regularly scheduled training programs conducted by the Indiana Secretary of State, shall develop training manuals and conduct regular training of local election officials at least once each year on the proper conduct of list maintenance under Section 8 of the NVRA and State law.

6. *Copies of Materials to Counsel for the United States.* The Secretary and/or the Co-Directors shall provide copies of the following to counsel for the United States for review and comment prior to dissemination or implementation: (1) the written plan for tracking county compliance with the NVRA referred to in Paragraph 4, *supra*; and (2) the written training materials discussed in Paragraph 5, *supra*. Both parties agree to confer during development of the materials discussed in this paragraph to ensure potential disagreements are minimized.

7. *Annual Reporting Requirements.* On or about January 31 of each year, the Secretary and/or the Co-Directors shall provide a report to counsel for the United States that sets forth the total number of active and inactive voters in each county in the State,

as well as the number of registrants removed by each county in the previous year.

8. *Retention of Records.* The State shall retain voter registration and list maintenance records related to the terms of this agreement for the time periods provided in 42 U.S.C. §§ 1973gg-6(I) and 1974. This shall include training materials and other documents related to the State's and counties' list maintenance obligations under the NVRA and State law. The State shall make these records available to counsel for the United States upon request.

9. *Costs.* Each party shall bear its own costs with regard to actions taken by the parties up to and including the entry of this decree.

10. *Binding Nature of Decree.* This Decree is binding on the Co-Directors, their successors in office, employees, representatives, delegates, agents, assigns, and all persons acting on their behalf.

11. *Termination Date.* This Agreement shall remain in effect until June 30, 2009.

Agreed to:

For the United States of America:

SUSAN BROOKS
United States Attorney

/s/ Tim Morrison
TIM MORRISON
Ind. Bar No. 9268-53
Assistant United States Attorney

For the Defendants:

APPROVED as to Form and Legality:
Office of the Attorney General

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Fax: (317) 233-6793

SO ORDERED this ___ day of _____, 2006

DATED: 07/05/2006

/s/ Richard L. Young

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 06-2218:

WILLIAM CRAWFORD, et al., Plaintiffs-Appellants, v. MARION COUNTY ELECTION BOARD, Defendant-Appellee.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division Cause below: No. 1:05-CV-634 Hon. Sarah Evans Barker, Judge

No. 06-2317:

INDIANA DEMOCRATIC PARTY, et al., Plaintiffs-Appellants, v. TODD ROKITA, et al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division Cause below: No. 1:05-CV-634 Hon. Sarah Evans Barker, Judge

SUPPLEMENTAL APPENDIX OF PLAINTIFFS-APPELLANTS INDIANA DEMOCRATIC PARTY AND MARION COUNTY DEMOCRATIC CENTRAL COMMITTEE

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF INDIANA; and KRISTI ROBERTSON and J. BRADLEY KING, Co-Directors of the Indiana Election Division, in their official capacity, Defendants.	Civil Action No. _____ 1:06-cv-1000-RLY-TAB

COMPLAINT

(Filed Jun. 27, 2006)

The United States of America, Plaintiff herein, alleges:

1. The Attorney General of the United States hereby files this action on behalf of the United States of America to enforce Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-6, regarding Indiana's obligation to perform voter registration list maintenance in elections for Federal office.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 1973gg-9.

3. Venue for this action is proper in the United States District Court for the Southern District of Indiana, as set forth in 28 U.S.C. §§ 94 and 1391(b).

PARTIES

4. Plaintiff UNITED STATES OF AMERICA seeks declaratory and injunctive relief pursuant to Section 11(a) of the NVRA, 42 U.S.C. § 1973gg-9(a), which authorizes the Attorney General of the United States to bring this suit to enforce the NVRA, and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. Defendant STATE OF INDIANA is covered by the requirements of the NVRA with respect to elections for Federal office. *See* 42 U.S.C. §§ 1973gg-1(4), 1973gg-2(b).

6. Defendants KRISTI ROBERTSON and J. BRADLEY KING are the Co-Directors of the Indiana Election Division. Section 10 of the NVRA requires that "[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this Act." 42 U.S.C. § 1973gg-8. Indiana law establishes that the Co-Directors of the Indiana Election Division are the State officials "responsible

for the coordination of state responsibilities under NVRA." Ind. Code § 3-7-11-1. The Co-Directors are being sued in their official capacities.

CLAIM FOR RELIEF

7. Section 8(a)(4) of the NVRA requires that "[i]n the administration of voter registration for elections for Federal office, each State shall . . . conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of - (A) the death of the registrant; or (B) a change in the residence of the registrant. . . . " 42 U.S.C. § 1973gg-6(a)(4).

8. Section 8(b) of the NVRA requires that "[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office" shall be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. § 1973 *et seq.*). . . . " 42 U.S.C. § 1973gg-6(b). Section 8(c) of the NVRA further provides that a State "shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters," except for removals based on a voter's death, conviction of a disqualifying crime or a request of the registrant. 42 U.S.C. § 1973gg-6(c)(2)(A) & (B).

9. Section 8 of the NVRA allows for the immediate removal of a voter from a registration list based on death, conviction of a disqualifying crime, or a request of the voter. *See* 42 U.S.C. § 1973gg-6(c)(2)(B). Section 8 of the NVRA also allows a voter to be immediately removed when a voter confirms in writing that the voter has moved outside of the registrar's jurisdiction, such as when a voter has registered to vote in another jurisdiction, in the manner provided by State law. *See* 42 U.S.C. §§ 1973gg-6(a)(3)(A), 1973gg-6(c)(2)(B), and 1973gg-6(d)(A). Section 8 of the NVRA sets forth specific notice procedures and time frames for removing a voter from the official list of registered voters when a registrar obtains information that a voter may have moved. *See* 42 U.S.C. §§ 1973gg-6(b)-(f).

10. Indiana has failed to conduct a general program that makes a reasonable effort to identify and remove ineligible voters from the State's registration list; has failed to remove such ineligible voters; and has failed to engage in oversight actions sufficient to ensure that local election jurisdictions identify and remove such ineligible voters. As a result, the State has had and continues to have many counties with excessively high registration totals as compared to the voting age population in each county.

11. The Department of Justice ("Department") first raised NVRA-related concerns in an April 7, 2005, letter addressed to the Indiana Secretary of State, with a carbon copy to the Co-Directors. In that letter, the Department specifically noted that

according to 2003 Census estimates Indiana had 23 counties with registration totals that were more than 100% of those counties' voting age populations.

12. According to data collected voluntarily from each State by the Election Assistance Commission ("EAC") from the November 2004 general election, 19 of 92 Indiana counties had more than 100% of their 2004 voting age populations ("2004 VAP") registered to vote. In addition, 23 counties had 95–100% of their 2004 VAP registered to vote, and an additional 25 counties had registration totals of 90-95%.

13. The State's very high registration totals, as compared to the national average, were highlighted in a recent court case. In *Indiana Democratic Party v. Rokita,* the State submitted expert testimony to justify why its new voter identification law was needed to combat election fraud. *See* "Entry Granting Defendants' Motions for Summary Judgment, Denying Plaintiffs' Motions for Summary Judgment, and Denying Plaintiffs' Motion to Strike," 1:05-CV-0634-SEB-VSS (S.D. Ind. 2006). The State's expert testified that Indiana's actual registration totals are 41.4% higher than the number of Indiana citizens who report that they are registered. This was the highest discrepancy in the nation. The expert further stated that there were 233,519 duplicate voter registrations on the State's registration list in 2004.

14. On January 1, 2006, the State launched its new statewide, computerized voter registration database, as required by the Help America Vote Act

of 2002 ("HAVA"), 42 U.S.C. § 15483(a). The new database interfaces with various State agencies, including the Bureau of Motor Vehicles, Department of Health, and Department of Corrections, and helps the State to identify "ineligible voters," as that term has meaning under the NVRA and HAVA. When the State ran a query to identify deceased registrants and duplicate registration applications, it discovered over 29,000 possible deceased registrants on the State's registration lists and nearly 290,000 possible duplicate registrations. None of these duplicate and ineligible voter registrations have been removed from the State's registration database.

15. The Department sent a second letter to the State on May 18, 2006, to the Co-Directors and with a carbon copy to the Secretary of State. The letter again questioned whether the State was complying with the NVRA's list maintenance requirements, especially given the many deceased registrants and duplicate registrations appearing in the statewide database. The letter also pointed to the many counties with registration totals in excess of the voting age population. The Department requested a response by May 25, 2006.

16. One Co-Director, Bradley King, responded on May 25, 2006. In his letter, Mr. King plainly admitted that "Indiana is not currently meeting its voter list maintenance obligations under the National Voter Registration Act (NVRA)."

17. Ms. Robertson did not contact or otherwise respond to the Department's letter.

18. These facts and admissions, as set forth above, demonstrate that the State is and has been in violation of Section 8 of the NVRA, 42 U.S.C. § 1973gg-6. Unless enjoined by the Court, Defendants will continue to violate this section by failing to conduct legally required list maintenance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays for an order:

1. Declaring that Defendants are in violation of 42 U.S.C. § 1973gg-6 because they have failed, *inter alia*, to ensure that the State of Indiana conducts an adequate general program of list maintenance that makes a reasonable effort to identify and remove the names of ineligible voters from the voter registration list in elections for Federal office, to remove such ineligible voters, and to engage in oversight actions sufficient to ensure that local election jurisdictions identify and remove such ineligible voters.

2. Enjoining the Defendants, their agents, representatives, delegates, and successors, and all persons acting in concert with any of them from failing or refusing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA in elections for Federal office;

3. Ordering the Defendants to take all steps necessary to remedy the demonstrated violations of Section 8 of the NVRA in elections for Federal office; and,

4. Ordering the Defendants to provide this Court, within 30 days from the date of the Court's order, a plan to remedy the demonstrated violations of Section 8 of the NVRA, and to affirmatively administer an adequate general program of list maintenance in compliance with the requirements of Section 8 of the NVRA in elections for Federal office. That plan should include, at a minimum: (i) a survey of a local 11 election authorities in the State to determine the status of Indiana's program of list maintenance and the current condition of its voter rolls, as well as the extent of any problems or inadequacies with that program or with those voter rolls; (2) a means to fully remedy past violations of the NVRA's list maintenance requirements, including a statewide mailing to identify voters who have moved; and (3) a means for the State to monitor and ensure it is meeting its obligations under the NVRA to conduct a uniform general program of list maintenance on a regular basis going forward.

5. Plaintiff further prays that this Court order such other and further relief as the interests of justice may require, together with the costs and disbursements of this action.

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